Brownfields in Vermont:

A Look at Existing Policy and Where to Go From Here

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Report Compiled May 2004 for the Vermont Public Interest Research Group

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Introduction

For developers, brownfields are a huge, and potentially very costly, unknown. While many brownfields are actually free of contamination, few developers are willing to conduct an initial assessment to determine if this is the case. They are afraid of future liability under the Superfund Act should contaminants be discovered in the future. Because of this fear, many brownfields have been left as eyesores in Vermont, and many prime agricultural lands and forestlands have been developed in their place.

This report looks for ways to encourage brownfields redevelopment by examining the brownfields issue, as well as existing and proposed brownfields legislation. Section I defines brownfields, states why redevelopment is an important goal for Vermont, and describes the state of brownfields redevelopment in Vermont. Section II provides a case study of a brownfields project in Montpelier, Vermont that is ongoing as of May 2004. Section III provides summaries of all relevant existing brownfields legislation both in Vermont and at the federal level. Section IV summarizes proposed brownfields legislation in Vermont and one proposed federal bill. Sections III and IV are reference tools for lobbyists as well as interested citizens. For convenience, there is a bulleted list of the most important points of each bill and act, followed by a more extended summary. The full texts of each bill can be found in the appendix. Section V analyzes the existing and proposed legislation in terms of its effectiveness, and also includes the authors' recommendations for the promotion of redevelopment in Vermont.

Section I: Brownfields in Vermont

What are Brownfields?

According to the Environmental Protection Agency (EPA), a brownfield is defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence, or potential presence, of hazardous substance, pollutant, or contaminant."[1] It is estimated that 450,000 to 1,000,000 brownfields exist throughout the country. Most of these abandoned sites are found in urban areas, which were once the centers of production. However, they are also found in suburban and rural areas as well. As economic markets change and evolve with time, these sites remain as shadows of past industry, unchanged and untouched because of their possible risks.

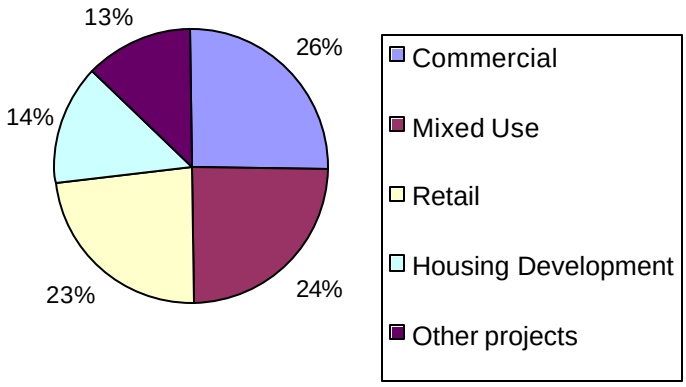
Brownfields may exist at the site of old industrial properties, old gas stations, vacant warehouses, former dry cleaning establishments, abandoned residential buildings, or at any location that once had a hazardous waste generator. While some brownfields are not hazardous, others can pose a threat to the environment and human health. Examples of possible contaminants are lead-based paint, asbestos, petroleum products, and other industrial wastes and chemical products. Other dangers include toxic metals such as chromium, which does not break down on its own, and methane gas, which is commonly released from landfills. Many of these harmful substances are capable of leaching into the soil and groundwater deposits, polluting the site itself, as well as adjacent parcels of land.

Brownfields often have the potential for redevelopment. According to the 2003 U.S. Conference of Mayors National Report on Brownfields Redevelopment, 153 cities that responded to their poll had successfully redeveloped more than 900 sites with the help of the

[1] Environmental Protection Agency, www.epa.gov

government or private firms, representing over 10,000 acres of redeveloped land.[2] The distribution of redevelopment is shown in Figure 1.

Figure 1: Nationwide Redevelopment of Brownfields



Why is Brownfield Redevelopment Important?

The redevelopment of low-risk abandoned sites can bring numerous benefits to surrounding areas, and because of this the EPA has targeted brownfields as a high priority for redevelopment. The redevelopment of brownfields is important for both urban renewal and economic growth. Redevelopment has successfully rejuvenated impoverished urban centers and neighborhoods, creating hundreds of new jobs, and generating hundreds of thousands of dollars in earned wages and millions of dollars in tax revenue. According to the Conference of Mayors Report, 60% of the 244 cities polled stated that if brownfields were redeveloped, they could expect an additional $790 million to $1.9 billion annually in tax revenues. The actual tax revenue increase from redeveloped brownfield sites in 45 cities totaled $90 million. In addition,

[2] US Conference of Mayors, *Recycling America's Land, A National Report on Brownfields Redevelopment*. Vol. IV, 2003.

148 cities responded that over 570,000 new jobs could be created on brownfield sites, with 74 cities confirming that 83,000 jobs had already been created on former brownfield sites.[3]

Moreover, brownfield redevelopment has played a critical role in the prevention of urban sprawl. By bringing former industrial and commercial sites back into production, communities can save farmland and other unused land known as "greenfields" from further development. When brownfield properties and their existing infrastructure are able to meet development needs, natural areas and green spaces are less likely to succumb to urban and suburban sprawl. According to Christie Whitman, the former head of the EPA, every acre of reclaimed brownfields saves 4.5 acres of greenspace, and every acre of greenspace created, on average, has doubled the value of surrounding properties.[4] The development of greenfields places pressures on the surrounding community by taking away this valuable open space. It also raises developers' costs. Greenfields lack infrastructure such as roads, electricity, and water, while brownfields usually have an existing infrastructure.

Recognizing the potential of brownfield redevelopment to control urban sprawl, many states and localities have incorporated them into their "smart growth" plans. Guidelines focus on reducing public costs, increasing private returns, saving natural resources, creating better access to goods and services, redeveloping within existing infrastructure, and preserving a sense of place.[5] One study determined that brownfield redevelopment seems to be the "politically

[3] US Conference of Mayors, *Recycling America's Land, A National Report on Brownfields Redevelopment*. Vol. IV, 2003.
[4] "President Signs Legislation to Clean Environment & Create Jobs," *U.S. Environmental Protection Agency*. www.epa.gov. 24 October 2003.
[5] "Where Do We Grow From Here? New Mission for Brownfields- Attacking Sprawl by Revitalizing Older Communities." *National Governors Association*. 2000.

smartest smart growth policy" because it is a "much less threatening way for federal and state governments to provide alternatives to sprawl."[6]

An additional benefit of redevelopment is improved health, both environmental and human, due to eliminating and controlling the contaminants present at these sites. Also, many redeveloped sites help contribute to the reduction of crime and poverty rates within communities.

Obstacles to Brownfield Redevelopment

With plenty of benefits to brownfield redevelopment, why are more projects not being undertaken? The process of redeveloping brownfields is complex and difficult, and extremely costly. According to the Superfund Act, the polluter is responsible for site cleanup. However, since these sites are abandoned, it is often not possible to track down past owners. In addition, contamination may be so old that the sources are unknown. As a result, under federal law, current property owners are responsible for cleanup costs even if they have not caused the pollution, and the cost can be extremely high. Even before beginning the cleanup process, site assessments must be made. Owners are required to pay for lawyers, contractors, scientists, and other professionals to test for contamination and to design methods to clean it.

Another reason for the costly cleanup includes the strict remediation standards for these sites. If a private firm attempts to redevelop a brownfield, the cleanup must be conducted according to federal regulations under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund") of 1980. Remediation standards

[6] Ibid, p. 8.

set by CERCLA require all sites to be so clean that a child can eat 200 mg of soil for 350 days without getting sick, regardless of future site and risk assessment.[7]

Because of the costly process of restoring brownfields, many developers look to the state and federal bureaus for funding assistance. Unfortunately, many of these funding programs are inefficient and funds are rather low. Also, due to the high demand for available funds, the application process is very competitive.

Another obstacle to brownfield redevelopment is time. Even before cleanup can begin, the time it takes to contact lawyers and state officials to receive the necessary permits and legal paperwork can take months, if not years. The long timeframe of brownfield redevelopment often discouragers private firms from becoming involved.

Addressing Brownfields in Vermont

Before brownfields can be redeveloped, they need to be identified. Brownfields are identified through a standardized Phase I Environmental Site Assessment (ESA). Insurers and lending institutions require an ESA, as part of commercial land sales, to evaluate the risks involved with the purchase of a property. A Phase II ESA is followed if further action, beyond the initial ESA, is needed. This consists of the collection of soil, groundwater, and air samples to determine the degree and extent to which contamination might be present. If contamination is found, the consultant notifies the Vermont DEC immediately. If the present contamination requires action to protect human and/or environmental health, a site number is assigned and the property is listed on the DEC Hazardous Sites List. After the Phase II ESA is complete, the data are available to the public, and the cleanup process and Phase III can begin. The

[7] Gattuso, Dana Joel. "Revitalizing Urban America: Cleaning up the Brownfields," *Competitive Enterprise Institute*. Washington D.C., July 2000.

recommendations made by the consultant in Phase II are sent to the State where they are reviewed by the DEC. A final "Corrective Action Plan" (CAP) is then designed based on the Vermont DEC comments and the consultant's changes. Once this happens, the cleanup is performed to best accommodate the specific future use of the site.[8]

Burlington, Vermont

As the largest urban center in the state, Burlington City contains the largest number of brownfields in Vermont. The city addresses the issue of brownfields redevelopment through the Burlington Brownfields Pilot Initiative, a program funded by the EPA. The Community and Economic Development Office (CEDO) administers the program. It offers financial assistance for assessments, which could result in the redevelopment of numerous contaminated sites into commercial and residential properties. CEDO works directly with developers, landowners, financial institutions, regulators, citizen groups, and non-profits on brownfield redevelopment projects.[9] This is one example of a program designed specifically to address the issue of brownfields. Other cities and municipalities in Vermont address brownfield redevelopment possibilities on a smaller scale through regional planning commissions. There have already been successful cleanups of brownfields in Vermont, while a number are currently in progress. A list of these sites may be found at Burlington Eco Info website distributed by University of Vermont: http://www.uvm.edu/~empact/land/brownfields.php3.

[8] www.uvm.edu/~empact/land/brownfields.php3, 4/13/2004.
[9] Burlington Eco Info Project. Brownfield Redevelopment.

Section II: Case Study

Carr Lot Project: Montpelier, VT[10]

The Carr Lot Property in Montpelier is an example of a remediation and redevelopment project currently underway in Vermont. See Appendix B for photographs of the site.

Location:

The Carr Lot Property is located in Montpelier, on the east side of Taylor Street, at the confluence of the North Branch and Winooski Rivers. It is approximately one acre in size. Currently, it is leased by the City as a public parking lot that includes approximately 100 parking spaces, in addition to a temporary trailer that serves as the Vermont Transit Company's intrastate bus station.

History of the Site:

In the 1800s, the site was used as a marble yard, train depot, train maintenance facility, and agricultural warehouse. In the 1900s, it was used as a stonemason's shop and transportation depot, and as a scrap metal salvage and processing yard from 1945 until the early 1980s. The City began to consider redevelopment potential in 1998, and in 2001 the City Council formed an official Carr Lot Redevelopment Committee.

Site Progress:

In 2001, the City received an EPA Targeted Brownfields Assessment grant (approximately $75,000) to examine the extent of environmental contamination on the site. An

[10] Information from URL: http://www.montpelier-vt.org/wip/carrlot/index.cfm; and personal communication with Jon Anderson, chair of the Carr Lot Advisory Committee.

initial site assessment was performed in December of 2001, and a more detailed assessment was completed in January of 2003.

The primary contaminants were identified to be:

- volatile organic compounds (VOCs),
- surface and subsoil containing: polyaromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), and metals (including arsenic, chromium, and lead) above EPA Preliminary Remediation Goals,
- surface soil with elevated petroleum hydrocarbons (in the vicinity of a former above ground storage tank), and
- groundwater samples with: VOCs, perchloroethylene, trichloroethylene, and metals in excess of VT Groundwater Enforcement Standards.

The site was placed on the State's hazardous sites list. The City has enrolled in the State's Redevelopment of Contaminated Properties Program (RCPP) and has taken on the responsibility to investigate and clean up the site (as it intends to purchase it).

Site Funding:

In addition to the 2001 EPA Targeted Brownfields Assessment grant, in March of 2002, Montpelier citizens voted to authorize the City council to spend up to $800,000 for purchase and redevelopment of the lot. In December 2002, the City submitted a Brownfields Clean-up Grant pre-application to the EPA. This grant, if awarded, will require the City to pay at least 20 per cent of the clean-up cost (estimated to be $200,000 or more). These funds will come from the portion of the $800,000 not used for purchase of the site, and from other community development funds in the City's budget. Other grant applications have been submitted for the cost of building after remediation has been completed.

Future of the Site:

After remediation, the City plans to develop the site as a multi-modal center. Half of the lot will be used for a transit/visitors center on the first floor including a transit ticket counter, office space, a transit waiting room, a tourist information center, a Welcome Center, public restrooms and showers, and a roughed in space for a future coffee shop. Two floors will be constructed above the transit/visitors center for use as private office space, though the City has not yet identified a tenant.

The other half of the site is proposed to be a public park with benches and a picnic area, lawn and flowerbeds, a bicycle and walking path, events space, and physical access to the river for fishing and boating.

Section III: Current Legislation

Vermont: Redevelopment of Contaminated Properties Program (RCPP)[11,12]

- VT state law
- Promotes development of brownfields by relieving the sponsor of liability after cleanup.
- Encourages site investigation and cleanup that might otherwise not happen due to cost and liability worries.
- Owner of property submits application addressing proposed redevelopment of property.
- State reviews application, then requires a Site Investigation as well as $5,000 to cover cost of state's oversight for plan review, construction and monitoring.
- Once plan is accepted, owner must fulfill all duties included in the plan.
- Once duties are completed, owner is relieved of all liability for issues related to contamination before the finish date.

Before the passage of Vermont's RCPP, hazardous waste liability statutes held landowners accountable for any releases on their property as well as making them responsible for cleanup costs despite actual fault. This statute discouraged potential landowners from purchasing property. In an effort to alleviate these issues, the state of Vermont passed the Redevelopment of Contaminated Properties Program in 1995. This program, run by the Agency of Natural Resources (ANR) and Department of Environmental Conservation (DEC), aids developers in acquiring property and provides protection from liability. Protection from liability is also extended to all subsequent owners of the property as long as they comply with the statute.

To qualify for RCPP the property must be vacant, abandoned, substantially under-utilized or soon to be acquired by a municipality. The applicant will be denied if they are found to be liable for any release of hazardous material at the property in question. Any property already involved with Superfund, the federal Resource, Conservation and Recovery Act or the Petroleum Cleanup Fund is ineligible.

[11] Summary compiled with the help of the DEC's *Cleanup of Hazardous Waste Sites Under the Vermont Redevelopment of Contaminated Properties Program Fact Sheet*. This can be found at: http://www.anr.state.vt.us/dec/wastediv/sms/RCPP/factsheets.htm.
[12] Full version in Appendix B

Applicants must submit a preliminary environmental assessment, description of the redevelopment, a certification from each person who would benefit from limited liability, and any other information requested by the Secretary of the ANR.[13] A non-refundable $500 application fee is also required.[14]

Once the applicant has been determined eligible, they must submit a site investigation, as well as a $5,000 fee to cover the cost of the state's review and monitoring.[15] Site Investigations must address the nature, source, degree and extent of contamination. If the $5,000 is exhausted before completion of the state's review, the applicant is responsible for supplying additional funding.[16] If the $5,000 is not exhausted by completion of the review, the remainder will be refunded to the applicant.

Once the corrective action plan has been drafted, a 15-day public comment period is required before it can be approved.[17] Once the plan is approved, the applicant is required to perform all of the activities stipulated in the site investigation work plan and the corrective action plan, release the state from all liability and turn over all relevant information to the state regarding hazardous waste and cleanup activities.[18] If the applicant withdraws from the program before the completion of the cleanup, they may not leave the property worse than they found it.

After the secretary issues a certificate of completion for all work required under the corrective action plan, the applicant will no longer be held liable for additional contamination discovered as a result of improved technology, changes in standards or a new release caused by the cleanup but cleaned up prior to the issuance of the certificate of completion. Also protected

[13] ANR-"Cleanup of Hazardous Waste Sites Under the Vermont Redevelopment of Contaminated Properties Program Fact Sheet". Can be found at: http://www.anr.state.vt.us/dec/wastediv/sms/RCPP/factsheets.htm
[14] RCPP Section 4, paragraph F.
[15] RCPP Section 6, paragraph 1.
[16] RCPP Section 6, paragraph 2 and Section 7, paragraph 2.
[17] RCPP Section 8, paragraph 5.
[18] RCPP Section 9, paragraph 1.

from liability are those who can determine that contamination on their property resulted solely by migration from another site for which they were not responsible.[19]

[19] RCPP Section 10, paragraph 1, Sections 11-12.

Federal: Small Business Liability Relief and Brownfields Revitalization Act[20,21]

- Passed: January 11, 2001
- Amends Superfund to protect small businesses and encourage development of brownfields.
- Provides exemptions from Superfund liability for small volume contributors of hazardous waste, businesses under the Small Business Act and certain non-profit organizations.
- Grants used to redevelop brownfields are generally $200,000.
- Grants may also be used to provide training, research and technical assistance to help with brownfields redevelopment.
- $50 million each year from 2002-2006 for states and tribes to develop state response programs for hazardous waste and brownfields.

The Small Business Liability Relief and Brownfields Revitalization Act (referred to subsequently as Brownfields Act) was signed into law on January 11, 2001. This bill serves to protect small businesses from liability under Superfund, to amend Superfund in order to encourage the redevelopment of Brownfields through financial assistance and to enhance state response programs.

The first part of the Brownfields Act provides exemptions from Superfund liability to small volume contributors at National Priorities List sites. Here, small volume is defined as less than 110 gallons of liquid materials or 200 pounds of solid materials all or part of which was disposed, treated or transported before April 1, 2001.[22]

The Brownfields Act also addresses Municipal Solid Waste (MSW), providing exemptions from Superfund liability if the person is an owner, operator or lessee of residential property, if the person is a business employing no more than 100 people and is a 'small business

[20] Summary completed with the help of the EPA's summary entitled: "Summary of the Small Business Liability Relief and Brownfields Revitalization Act". Can be found at: http://www.epa.gove/brownfields/html-doc/2869sum.htm
[21] Full text in Appendix B
[22] Brownfields Act, Section 102, paragraph o1A-B.

concern' under the Small Business Act.[23,24] Further exemptions include a nonprofit business employing no more than 100 people at the location that the MSW was generated.[25] Exceptions include those listed in the previous paragraph.[26]

The Brownfields Act defines municipal solid waste as that generated by a household or that generated by a commercial, industrial or institutional entity to the extent that the waste is similar to that generated by a household, is disposed of with other MSW and contains a low quantity of hazardous substances.[27,28]

If a lawsuit is brought against a party, charging them with responsibility for contamination, and they are found to be innocent, the party bringing the charge is responsible for reimbursing the defendant for all costs relating to the lawsuit.[29]

Brownfields Revitalization and Environmental Restoration

This section of the Brownfields Act is essentially an amendment to Superfund to include brownfields and establish funding to restore them. Land subject to a planned or ongoing Superfund action is excluded from the definition.[30]

The act relieves owners/operators of contiguous property from liability due to contamination of their property provided they are not responsible for the contamination.[31] The act also amends Superfund legislation to protect prospective purchasers from owner/operator liability as long as the performance of a response action or natural resource restoration is not

[23] Brownfields Act, Section 102, paragraph p1A.
[24] Brownfields Act, Section 102, paragraph p1B.
[25] Brownfields Act, Section 102, paragraph p1C.
[26] Brownfields Act, Section 102, paragraph p2A-C.
[27] Brownfields Act, Section 102, paragraph p4Ai.
[28] Brownfields Act, Section 102, paragraph p4AiiI-III.
[29] Brownfields Act, Section 102, paragraph p5B7
[30] Brownfields Act, Section 211, paragraph ai-ix.
[31] Brownfields Act, Section 221, paragraph q1Ai-viii.

impeded and all disposal of hazardous waste took place before the date of purchase.[32] Furthermore, punishment is restricted for sites in which a CERCLA-covered substance is released or a person is in the process of conducting a cleanup.[33] This restriction applies only to response actions conducted after February 15, 2001.[34]

Section 223 further amends Superfund legislation to clarify what actions landowners must take to prove that they are innocent landowners.[35]

The Brownfields Revitalization funding provides grants to inventory, characterize, assess, and conduct planning.[36] Grants to be used for remediation will generally be $200,000 but may be up to $1,000,000 and may be used to capitalize revolving loan funds.[37] Grants used for site characterization and assessment will generally be in the amount of $200,000 but may be up to $350,000.[38]

This act also establishes a program to provide "training, research and technical assistance" to facilitate brownfields assessment and cleanup.[39] Section 231, the State Response Programs section, amends Superfund and authorizes $50 million each year from 2002-2006 in grants to be used to assist states and tribes in the development of state response programs. Funds are awarded if the state is a party of a memorandum of agreement with the EPA for its voluntary response program or if the state is working toward protecting human health and the environment as well as promoting economic development of a property for non-profit purposes.[40]

[32] Brownfields Act, Section 222
[33] Brownfields Act, Section 128, paragraph b1A
[34] Brownfields Act, Section 128, paragraph b2B3.
[35] Brownfields Act, Section 223, paragraph 2B.
[36] Brownfields Act, Section 211, paragraph b2Ai.
[37] Brownfields Act, Section 211, paragraphs b3-4.
[38] Brownfields Act, Section 211, paragraph b4A2II.
[39] Brownfields Act, Section 211, paragraph b6A.
[40] Brownfields Act, Section 231, paragraph a41A-B and section 128.

Section 232 of the act addresses additions of sites to the National Priorities List by requiring the deferral of a listing if the site is being cleaned up under a state program or other cleanup agreement. However, the deferred site may be listed after one year if the state is not making progress toward cleanup.[41]

[41] Brownfields Act, Section 232, paragraph h.

Federal: Brownfield Site Redevelopment Assistance Act of 2002[42]

- $60 million for 5 years (2003-2007) for brownfield redevelopment.
- Grants are given to projects focused on promoting economic development and eco-industrial development.
- Run by the Department of Commerce's Economic Development Administration (EDA).

The Brownfield Site Redevelopment Assistance Act of 2002 gives the Department of Commerce's Economic Development Administration (EDA) the power to undertake individual brownfields redevelopment projects. Before the passage of this act, EDA funding could only be used for brownfields redevelopment when the project involved public works or economic adjustment projects. The act also allocates $60 million a year for 5 years (2003-2007) and is meant to complement the Brownfields Revitalization and Environmental Restoration Act by focusing on the step after assessment and cleanup, redevelopment.

Brownfields are defined as property with the presence or potential of hazardous substances.[43] Additional inclusions will be allowed if, on a site-by-site basis, the Secretary of Commerce in consultation with the EPA concludes that financial assistance at the site will protect human health and the environment; promote economic development; enable the creation or preservation of parks, greenways, and undeveloped properties; and promote eco-industrial development.[44]

Eco-Industrial Development is encouraged in this act and is defined as the cooperation of businesses to share resources in order to achieve the goals of economic gains, environmental quality and enhancement of human resources in the community.[45]

The EDA will be given the authority to give grants in support of development of public facilities, business development, technical assistance and training, activities to help communities

[42] Full text in Appendix C
[43] Brownfield Site Redevelopment Assistance Act (BSRA), Section 3, paragraph 1A
[44] BSRA, Section 3, paragraph 31C
[45] BSRA, Section 3, paragraph 3D4

diversify their economies and encourage infill development and collaborative economic development planning. Eligible recipients of such grants include an economic development district, an Indian tribe, a State, a city, an institution of higher education or a public or private nonprofit organization.[46]

Grants are also available for projects that solve issues of unemployment, blight and infrastructure deterioration such as development of public facilities, services, business development, etc.[47]

If the overall cost of the project is found to be lower than the appropriated grant before the project is finished, excess funds or a portion of the funds can be used to improve the project and / or remaining money is deposited into the general treasury.[48]

Recipients of grants are required to submit reports to the Secretary at specific intervals for no longer than 10 years after the closeout of the grant.[49] Each report should address the effectiveness of the economic assistance in meeting the needs that the grant was designed to address.[50]

Furthermore, the act recognizes that the EPA is primary protector of the environment within the federal government. Therefore, the EDA does not intend to make remediation decisions that would supplant the EPA's authority. The act requires any funding applicant to have their site approved by the EPA.[51]

[46] BSRA, Section 3, paragraph 36A
[47] BSRA, Section 210, paragraph a
[48] BSRA, Section 211
[49] BSRA, Section 212, paragraph a
[50] BSRA, Section 212, paragraph b
[51] BSRA, Section 3, paragraphs 1Aii, 1C, 1DiiII

Section IV: Proposed Legislation

Vermont Bill S.42: An act relating to creating an office of land recycling, and otherwise revising the brownfields reclamation program[52]

- Sponsored by: Matt Dunne, Hinda Miller
- Status (May 2004): passed Senate 5/13/03, passed House 4/27/04, currently in conference
- Revises 10 V.S.A 6615a (Redevelopment of Contaminated Properties Program).
- Exempts municipalities and government agencies from liability under 10 V.S.A 6615 when properties are obtained involuntarily
- Calls for greater research into the brownfields situation in Vermont
- Asks secretaries to come up with a list of the best candidates for redevelopment, and plans to fund those projects
- Exempts qualifying redevelopers from hazardous waste taxes under 32 V.S.A 10103(b)
- Asks the Secretary of Commerce and Community Development to investigate insurance products that will encourage redevelopment

This bill is sponsored by senators Matt Dunne and Hinda Miller. S.42 passed in the Senate on May 13, 2003 and April 27, 2004 in the House in a slightly different form. The bill is currently in conference. S.42 revises 10 V.S.A 6615a (Redevelopment of Contaminated Properties Program).

The bill amends the liability section of 10 V.S.A. (6615) by exempting municipalities and government agencies from liability when properties, including brownfields, are acquired involuntarily through bankruptcy or abandonment.

The revision also calls for further research into the state of the brownfields situation in Vermont.[53] Under the Redevelopment of Contaminated Properties Program (RCPP) the secretary of Commerce and Community Development must submit an annual report to the joint fiscal committee on the financial situation of the program. Under the new bill, the Secretary of Commerce and Community Development must consult with the Secretary of Natural Resources and submit a more detailed report including the number, location, and status of brownfield

[52] Full text in Appendix D
[53] Section G

sites.[54] The Agency of Natural Resources and the Agency of Commerce and Community Development are also required to develop a state plan for brownfields reclamation. The plan will include an inventory of brownfield sites, prioritized by ease of remediation, the availability of development opportunities, and financial potential. The plan also includes an investigation into financing and ensuring consistent State investment in the projects for at least ten years.[55] Also, to improve the feasibility of redevelopment, the bill asks the secretary of commerce and community development to investigate favorable insurance products.[56]

To further encourage the redevelopment of contaminated sites, the bill exempts redevelopers that have successfully followed a natural resources agency approved corrective action program from State taxes on removed hazardous wastes. This amends Sec.3. 32 V.S.A 10103(b).

[54] section 6 Gii.
[55] section 6 E1 and E2.
[56] section 4.

Vermont Bill S.128: An act relating to establishing a brownfields remediation standard[57]

- Sponsors: Robert Ide (no longer a senator)
- Status (May 2004): in Natural Resources and Energy Committee
- Proposes to revise RCCP to create a "brownfields remediation standard"
- Determination of eligibility is no longer at the Secretary of Natural Resources' sole discretion
- Secretary of Commerce and Community Development would be an interested party and would be eligible to intervene
- Adjacent property owners and the town and regional development corporations will, upon request, have party status

S.128 was sponsored by Robert Ide, who is no longer a state senator. The bill is currently in the Natural Resources and Energy Committee. S.128 proposes to revise RCPP.

The bill creates a "brownfields remediation standard" which is specific to the site and intended future use. This could lead to less stringent clean-up requirements for certain properties. The bill is concerned primarily with threats to human health and property values, and does not mention environmental harm.

The bill also proposes to make the Secretary of Commerce and Community Development an interested party who can intervene in any binding arbitration.[58] Each adjacent property owner, and each town or village in which the property is located, would also be granted party status.

[57] Full text in Appendix E
[58] Section V.2A.

Vermont Bill S.296: Stimulate the growth of a sustainable creative economy and credible jobs in Vermont[59]

- Sponsors: Matt Dunne, Hinda Miller, John Campbell, and Kevin Mullin
- Status (May 2004): in Senate Finance Committee
- Provides funding for the assessment and redevelopment of brownfields
- Creates 3 higher education institute grants of $100,000 each which may be used for brownfields research
- Creates "downtown property assessment fund" and adds $1 million to it in fiscal year 2005
- Creates a downtown revitalization fund and adds $250,000 to it in FY 2005

This bill is sponsored by: Matt Dunne, Hinda Miller, John Campbell, and Kevin Mullin. The bill is currently in the finance committee in the senate.

This bill provides funding for the redevelopment of brownfields. Significant funding for redevelopment has not come from Vermont in the past. The bill proposes to give three different higher education institutes grants of $100,000 each in FY 2005. This money *may* be used towards the research of downtown redevelopment, but there are also other unrelated spending possibilities.[60]

More concrete funding comes in the form of the proposed "downtown property assessment fund," which is an amendment to 24 V.S.A. 2797. This provides funding for municipalities to assess possible remediation sites. The Department of Housing and Community Affairs would administer it. The bill proposes that $1 million be added to the property assessment fund in FY 2005 from the general fund. Proceeds from the issuance of general obligation bonds would also be added to the downtown property assessment fund. The bill would require municipalities to show that redevelopment could not occur without the funding, and that redevelopment would have a significant impact on the downtown area in question.

[59] Full text in Appendix F
[60] Section 4(1)

The bill also would create a downtown revitalization fund that would provide money for the actual clean up of the sites. An individual or a municipality would be able to apply for assistance if they could show that redevelopment would act as an economic catalyst. The bill proposes to add $250,000 to this fund from general obligation bond proceeds.[61]

[61] Section 12.

Federal Brownfield Tax Credit Bill[62]

This bill, sponsored by Rep. Michael Turner, would provide $1 billion in state funding for brownfields redevelopment, allocated by state population size. The program would be administered by state agencies. Credits could be good for up to 50% of the cost of remediation. The credits would be transferable and could be sold. The bill provides incentives for original polluters to contribute—a potentially responsible party that pays for no less than 25% of the clean-up costs would receive a 100% liability release. Plans for the bill were just announced in March 2004, and no action has yet been taken.

[62] Full text in Appendix G

Section IV: Analysis and Recommendations

While Vermont's action regarding brownfield redevelopment is steadily improving, there is still much progress to be made. Various states have taken a leading step in brownfield redevelopment through the incorporation of market-based strategies, and Vermont should examine such innovation.

Over recent years, states have made great progress in the brownfields market. Unlike traditional cleanup methods used by the federal government, state governments emphasize "incentives over enforcement; relief from unfair and debilitating liability laws to reduce risk to owners, developers, and lenders; risk-based remediation standards over one-size-fits-all; and financial incentives."[63] These financial incentives include liability relief, tax credits and abatements, property tax credits, grants and revolving loans.

Goals for Brownfields Legislation

Remediation

The most important goal for brownfields legislation in the State is cleaning up sites and redeveloping them. Because Vermont has so much undeveloped land, it may be difficult to convince developers to undertake the extra cost and hassle of remediation rather than simply developing greenfields. However, one of Vermont's most precious characteristics is the very existence of such vast green space. The redevelopment of brownfields not only cleans the environmental and eliminates the public health threats posed by the properties, but also preserves the integrity of the State's greenfields.

[63] Gattuso, Dana Joe. "Revitalizing Urban America: Cleaning Up the Brownfields," *Competitive Enterprise Institute*. Washington, D.C., July 2000.

Liability Issues

State and Federal law hold property owners legally responsible for contamination on their property – regardless of whether the owners were responsible for the contamination. Such liability concerns scare off most developers who might otherwise be interested in building on brownfields. The State's goals should include protection for those who – on the condition that they were not responsible for the contamination – undertake remediation and redevelopment of brownfields. However, the state should not relax liability rules for those responsible parties that can be identified. Other states, realizing that liability is an obstacle to brownfield redevelopment, have begun to issue liability relief for potential buyers or lenders. They issue a "covenant not to sue" that frees owners of possible legal action after the site has successfully been cleaned to state remediation standards.

Funding

Remediation is expensive, and the state requires the process to be monitored by a state agency – at additional cost. While some Federal grants are available to assist in the process (see Appendix A), Vermont should also aid redevelopers. If brownfields remediation is to be a priority in the state, funding should be appropriated each year – first to assist with site assessment costs, and then to aid clean-up efforts. This funding may be supplied through various grants and revolving loans. Other ways states can help reduce the high cost of redevelopment and attract developers is through financial incentives, such as tax credits and abatements or property tax credits, providing owners with some sort of compensation for the overall cost of redevelopment.

Inventory

There is no complete inventory of brownfields in the state, or in the nation. Without an inventory, there is no way to determine the scale of the problem or how much funding should be appropriated. An inventory would serve two valuable purposes: as a measure of the brownfields problem, and a list of sites with the potential for assisted redevelopment.

Public Participation

Some states have realized the importance of informing residents about cleanup efforts, and have in some cases involved residents in the implementation of redevelopment plans.[64] This contributes to the overall effectiveness of a state's brownfield program. Citizens can also act as a catalyst for change because of their great concern for what happens in their backyards.

The issue of brownfields redevelopment in Vermont may not be as pressing as it is in other, more highly developed states. However, it is still an important issue that deserves attention from state officials. If Vermont is to maintain its agrarian identity, the state needs to continue to revisit and revise its current brownfield program.

Assessment of Proposed Legislation

Vermont Bill S. 42

This Bill addresses several of the recommended goals for brownfields legislation in Vermont. First, it creates an annual state inventory program of the brownfields situation in the state and in each town. The inventory will be useful for both determining budgetary issues and helping to identify sites for redevelopment.

Second, the bill further addresses liability issues, particularly those regarding state and municipally held properties. Often brownfields are acquired by these bodies involuntarily

[64] Ibid.

because of bankruptcy. In such cases, the towns or state might be held liable for contamination on the property. This bill would exempt municipalities and state agencies from liability when properties are acquired in this way. The bill also encourages redevelopment by exempting developers from taxes on hazardous waste removed from redevelopment sites.

S.42 is essentially continuing the work that RCPP started. When RCPP was first being considered in the Vermont legislature, there was a lot of resistance to it, much of which was coming from the environmental community.[65] People were afraid that the bill, designed to promote economic development and new jobs without compromising farm and forestland, would really amount to letting polluters off the hook. Because of this resistance, a compromise had to be made. Developers received "limited liability", but the ANR secretary could change the clean-up plan at any time during the process. With this unpredictability, developers found it hard to receive financing for plans. S.42 takes a little more of the "unknown" out of brownfield redevelopment without letting polluters off the hook, and the authors recommend its passage.

Vermont Bill S. 128

This bill might have the effect of loosening remediation standards in some cases. It proposes to set a "brownfields remediation standard" that is site-specific and only goes as far as human health threats and property valuation to set this standard. There is no mention of environmental harm, and it is unclear whether environmental harm will be considered in setting the site standard. The bill also impedes redevelopment by given more individuals party status. The bills author, Robert Ide, is no longer a state senator, and it is unlikely that the flawed bill will gain support. It is the authors' recommendation that the bill not be passed.

[65] Senator Matt Dunne, personal communication.

Vermont Bill S. 296

This bill proposes to appropriate funding for brownfields assessment and remediation beginning in fiscal year 2005. Individuals and municipalities would be able to apply for clean-up assistance when it can be shown that remediation of the property would be an economic catalyst. A Vermont funding commitment would have a profound impact on the brownfields situation. When sites have already been assessed, developers are far more likely to want to get involved with them. The authors recommend the passage of S.296.

Federal Brownfields Tax Credit Bill

Although this bill has only just been announced, its potential impact on brownfields remediation is immense. It proposes to appropriate $1 billion in federal funding for remediation, allocated by state population size. The funds could be used to assist with up to 50% of clean-up costs. Liability exemption may also be built into the bill for some parties. This bill would have a profound impact on the brownfields situation nationwide and in Vermont, and the authors recommend its passage.

Conclusions

The brownfields issue is a bipartisan one. As case in point, S.42 was unveiled by a democratic senator and a republican governor. Redevelopment appeals to environmentally minded individuals, as well as individuals who are more concerned with economic health. It is a win-win situation for politicians, but unfortunately that is not yet the case for developers. Further legislation must work to remove the "unknown" so that developers will be attracted to these sites and will be able to secure the loans to develop on them.

Appendix A:

U.S. Environmental Protection Agency Program Funding in Vermont

Assessment Grant Program

Recipient:	**Funding:**
Burlington	$500,000
Central VT Regional Planning Commission (RPC)	$200,000
Northwest RPC	$400,000
Rutland	$200,000
Rutland RPC	$200,000
Southern Windsor County RPC	$350,000
Two Rivers Ottauquechee Regional Commission	$200,000
Windham Regional Commission	$550,000
Assessment Grant Program Total:	**$2,600,000**

EPA-Lead Targeted Brownfields Assessments

Site:	**City:**	**Approx. Value of Assessment:**
28 River St.	Windsor	$100,000
Carr Lot	Montpelier	$75,000
TLR Complex	Rockingham	$75,000
EPA-Lead Targeted Brownfields Assessments Total:		**$250,000**

Revolving Loan Fund

Recipient:	**Funding:**
Southern Windsor County RPC	$1,000,000
Assessment Grant Program Total:	**$1,000,000**

State-Lead Targeted Brownfields Assessments

Site:	**City:**
BCIC Building Comples	North Bennington
Jewell Brook Property	Ludlow
Sweat Comings	Richford
State-Lead Targeted Brownfields Assessments Total:	**$458,000**

State Voluntary Cleanup Program

Site:	**Funding:**
Vermont Agency of Natural Resources	$704,060
State Voluntary Cleanup Program Total:	**$704,060**

All funding totals current as of February 2004.

All data from US EPA website: http://www.epa.gov/region1/brownfields/funding/vt.htm

Appendix B: Carr Lot Photos

Photographs were taken of the Carr Lot property in Montpelier, VT. The property is an example of a site undergoing the process of brownfields remediation and redevelopment. The site is only in the early stages – a site assessment has recently been completed and clean-up will soon begin. It is an example of how much potential can lie in a brownfield site: the site is in downtown Montpelier, near the State House. Its real estate value is likely quite high.









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Appendix C: Redevelopment of Contaminated Properties Program

Title 10: Conservation and Development

Chapter 159: WASTE MANAGEMENT

10 V.S.A. § 6615a. Redevelopment of contaminated properties program

§ 6615a. Redevelopment of contaminated properties program

(a) Establishment of program. A property cleanup program is hereby created to enable certain interested parties to request the assistance of the secretary in reviewing and overseeing work plans to investigate, abate, remove, remediate and monitor those properties in exchange for protection from certain liabilities under section 6615 of this title. This program, to be called the "redevelopment of contaminated properties program," shall be established within the agency of natural resources, department of environmental conservation.

(1) Pilot project. Between the dates of January 1, 1998 and July 1, 2001, no more than five new projects may be eligible to participate in the pilot project established under this subdivision. Eligibility will be determined on a first-come first served basis, based upon the order in which applications are received, between those dates. An applicant will retain his or her rank in the order of filed applications as long as the secretary does not issue a finding that the applicant has failed to progress with the project in a timely fashion, in which case the next applicant will assume that ranking, and the applicant who is the subject of the failure to progress finding shall be moved to the bottom of the list. New applications to participate in the pilot project will not be accepted after July 1, 2001.

(2) Benefits of participation in pilot project. Participants in the pilot project will be entitled to all benefits specified in this section.

(b) Definitions. For the purposes of this section, "eligible person" shall mean a person, as defined in section 6602 of this chapter, who has been determined to be eligible for the redevelopment of contaminated properties program pursuant to subsection (f) of this section. The term "eligible person" shall include a secured lender who holds indicia of ownership in the property, as those indicia are described in section 6602(23) of this title, if the secured lender has been determined to be eligible for the redevelopment of contaminated properties program pursuant to subsection (f) of this section.

(c) Protection from liability.

(1) Subject to the provisions of this section, an eligible person, who is not otherwise liable under section 6615 for releases or threatened releases of hazardous materials at a property, shall not be liable under subdivision 6615(a)(1) of this title for the releases or threatened releases of hazardous materials, solely as a result of being an owner or operator of the property, if the eligible person complies with this section and obtains a certificate of completion pursuant to subsection (k) of this section.

(2) Subject to the limitations on protection from liability under subsection (d) of this section and the obligations under subsection (j) of this section, the protection from liability provided by subdivision (c)(1) of this section shall apply to all successors to an ownership interest in the property.

(3) Subject to the limitations on protection from liability under subsection (d) of this section and the obligations under subsection (j) of this section, a person protected under subdivision (c)(1) or (2) of this section shall not be liable under subdivision 6615(a)(1) of this title:

(A) for releases or threatened releases, existing at the property at the time of the approval of the corrective action plan, that were discovered, after approval of the corrective action plan, by means that were not recognized standard methods at the time of approval of the corrective action plan;

(B) for releases or threatened releases, existing at the property at the time of the approval of the corrective action plan, that were not regulated as hazardous material until after approval of the corrective action plan; or

(C) for additional cleanup, after approval of the corrective action plan, if that additional cleanup is required by more stringent cleanup standards that became effective after approval of the corrective action plan.

(4) The secretary shall not grant any protection from liability to an eligible person or successor pursuant to this program, other than the protection provided in subdivisions (1) and (2) of this subsection.

(5) If an eligible person or successor is implementing, in good faith, the approved site investigation work plan or corrective action plan, the state may not bring an action against the eligible person or successor based on liability under subdivision 6615(a)(1) of this title, if that action relates to releases or threatened releases of hazardous materials that are described in the approved corrective action plan, as amended.

(d) Limitations on protection from liability.

(1) The protection from liability provided by subdivisions (c)(1) and (2) of this section and the forbearance from action provided by subdivision (c)(5) of this section does not extend to any of the following:

(A) Releases or threatened releases at the property that were not present at the time the eligible person submitted an application under this section, excluding those releases and threatened releases which result from the nonreckless performance of an approved site investigation work plan or an approved corrective action plan and which are abated, removed, remediated or monitored pursuant to an approved corrective action plan prior to the issuance of a certificate of completion. Wilful misconduct in the performance of an approved plan may constitute reckless performance of that plan.

(B) Releases or threatened releases at or from the property that were present at the property but were not included in information provided to the secretary, under this program, by the eligible person, or the successor, by the time the secretary issued a certificate of completion pursuant to subsection (k) of this section. Liability under this subdivision (d)(1)(B) shall be subject to the defenses created under subsection 6615(e) of this title.

(C) Liability or actions arising under subdivision 6615(a)(2), (3) or (4) of this title.

(2) There shall be no protection from liability under subdivision (c)(1) or (2) of this section, and no forbearance from action provided by subdivision (c)(5) of this section, if the eligible person obtains a determination of eligibility under subsection (f) of this section, or any approval under this section, by fraud or intentional misrepresentation, by knowingly failing to disclose material information, or by providing false certifications pursuant to subdivision (e)(1)(F) of this section.

(3) There shall be no protection from liability under subdivision (c)(1) of this section for an eligible person, or forbearance from action provided by subdivision (c)(5) of this section, if that eligible person engages in activities that are inconsistent with or interfere with monitoring, investigation, abatement, removal or remediation activities, or conditions or restrictions in a certificate of completion. There shall be no protection from liability under subdivision (c)(2) of this section for a successor, or forbearance from action provided by subdivision (c)(5) of this section, if that successor engages in activities that are inconsistent with or interfere with monitoring, investigation, abatement, removal or remediation activities, or conditions or restrictions in a certificate of completion.

(4) There shall be no protection from liability under subdivision (c)(1) or (2) of this section if the eligible person, prior to issuance of the certificate of completion, transfers the property and the eligible person or successor does not complete the approved corrective action plan and obtain a certificate of completion.

(5) There shall be no protection from liability under subdivision (c)(1) or (2) of this section as to an eligible person or successor, or forbearance from action provided by subdivision (c)(5) of this section, if that eligible person or successor worsens an existing release or threatened release prior to the issuance of a certificate of completion, and that release or threatened release is not abated, removed, remediated or monitored pursuant to an approved corrective action plan prior to the issuance of a certificate of completion.

(6) There shall be no protection from liability under subdivision (c)(2) of this section for a successor, or forbearance from action provided by subdivision (c)(5) of this section, if that successor or any of its principals, owners, directors, affiliates or subsidiaries:

(A) ever held an ownership interest in the property or in any related fixtures or appurtenances, excluding a secured lender's holding indicia of ownership in the property primarily to assure the repayment of a financial obligation, and except in the case of an innocent owner as specified in subdivision (f)(1)(B)(ii) of this section;

(B) directly or indirectly caused or contributed to any releases or threatened releases of hazardous materials at the property;

(C) currently operates or controls, or ever operated or controlled the operation at the property of a facility for the storage, treatment, or disposal of hazardous materials from which there was a release or threatened release;

(D) disposed of, or arranged for the disposal of hazardous materials at the property; or

(E) generated hazardous materials that were disposed of at the property.

(e) Application process.

(1) A person shall submit to the secretary a complete application consisting of:

(A) the information required by the program application;

(B) a nonrefundable application fee of $500.00;

(C) a preliminary environmental assessment of the property, including a legal description of the property; a description of the physical characteristics of the property; all information known to, or in the control of, the person concerning the operational history of the property, the nature and extent of releases and threatened releases at the property and the risks to human health and the environment from releases or threatened releases; and any other information requested by the secretary regarding the property;

(D) a description of the proposed redevelopment and use of the property;

(E) any information necessary for the secretary to make the findings required in subsection (f) of this section;

(F) a written report demonstrating the applicant has provided the public with notice and a reasonable opportunity to submit comments to the secretary on the information and material referenced in subdivisions (1)(C) and (D) of this subsection; and

(G) a certification, under oath and notarized, from the person:

(i) that each person who would benefit from any protection from liability pursuant to subdivision (c)(1) of this section has fully and accurately disclosed to the secretary all information currently known to the person, or in the person's possession or control, which relates to releases or threatened releases of hazardous materials at the property; and

(ii) that, as to each person who would benefit from any protection from liability pursuant to subdivision (c)(1) of this section, neither that person nor any of its principals, owners, directors, affiliates or subsidiaries:

(I) currently holds or ever held an ownership interest in the property or in any related fixtures or appurtenances, excluding a secured lender's holding indicia of ownership in the property primarily to assure the repayment of a financial obligation, and except in the case of an innocent owner as specified in subdivision (f)(1)(B)(ii) of this section;

(II) directly or indirectly caused or contributed to any releases or threatened releases of hazardous materials at the property;

(III) currently operates or controls, or ever operated or controlled the operation, at the property, of a facility for the storage, treatment, or disposal of hazardous materials from which there was a release;

(IV) disposed of, or arranged for the disposal of hazardous materials at the property; or

(V) generated hazardous materials that were disposed of at the property.

(2) Not more than 30 days after the secretary receives a complete application, the secretary shall determine if the person is eligible to participate in the program pursuant to subsection (f) of this section and shall notify the person in writing. The determination of eligibility is within the secretary's sole discretion and is final. Together with notice, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person has completed the various stages of the process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff.

(3) An eligible person or successor may withdraw from the program at any time subject to the obligations of an eligible person or successor under subsection (j) of this section.

(f) Eligibility.

(1) A person is eligible if the secretary determines all of the following:

(A) There is a release or threatened release of a hazardous material at the property which the person proposes to redevelop.

(B)(i) The person is not liable under section 6615 of this title for any release or threatened release at the property. Any determination of nonliability under this subdivision is solely for purposes of the initial eligibility determination for this program and shall not have any collateral effect in other proceedings; or

(ii)(I) The person is owner of the property, but is an "innocent owner" who did none of the following: (aa) hold an ownership interest in the property or in any related fixtures or appurtenances, excluding a secured lender's holding indicia of ownership in the property primarily to assure the repayment of a financial obligation, at the time of any disposal of hazardous materials on the property; (bb) directly or

indirectly cause or contribute to any releases or threatened releases of hazardous materials at the property; (cc) operate, or control the operation, at the property of a facility for the storage, treatment, or disposal of hazardous materials at the time of the disposal of hazardous materials at the property; (dd) dispose of, or arrange for the disposal of hazardous materials at the property; or (ee) generate the hazardous materials that were disposed of at the property.

(II) The secretary may accept an affidavit of innocence to establish the fact of innocence, or the secretary may request further information and investigate, as appropriate, to determine eligibility under this section. Any determination of innocence under this subdivision is solely for purposes of the initial eligibility determination for this program and shall not have any collateral effect in other proceedings.

(C) The property, or involved portion of the property, is one of the following:

(i) A vacant, abandoned, or substantially underutilized property as defined by the secretary.

(ii) To be acquired by a municipality.

(D) The property is not ineligible pursuant to subdivision (f)(2) of this section.

(2) The following properties are ineligible:

(A) property that is listed on the national priorities list of superfund sites established under the federal Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. 9601 et seq., provided however, that if there are active ongoing negotiations with the secretary and the attorney general for a prospective purchaser agreement prior to April 20, 1995, a prospective purchaser agreement may be entered into with respect to that property;

(B) property for which a treatment, storage or disposal certification has been issued pursuant to 10 V.S.A. § 6606, and at which a release of hazardous material has occurred which is subject to the corrective action requirements of the federal Resource, Conservation and Recovery Act, 42 U.S.C. 6901 et seq., as implemented by the state of Vermont;

(C) property at which the only known release or threatened release relates to an underground storage tank subject to 10 V.S.A. 1941.

(3) Notwithstanding the requirements of this section regarding the ineligibility of current owners, current owners shall be eligible if the property is contained within a downtown development district designated under the provisions of chapter 76A of Title 24, and as long as the owners and the property are otherwise eligible under the provisions of this section.

(g) Submittal and approval of site investigation.

(1) If the secretary determines that a person is eligible under subsection (f) of this section, the eligible person or successor shall submit a site investigation work plan to the secretary and a fee of $5,000.00 to be applied toward the direct and indirect costs of the secretary's review and oversight of the performance of the site investigation and any corrective action plan. The work plan shall identify the person or persons to conduct the site investigation, who shall carry appropriate insurance, post a bond in an amount specified by the secretary, meet other qualifications as determined by the secretary, or any combination of the above, as determined by the secretary. The work plan shall describe a site investigation which fulfills the following objectives:

(A) to define the nature, source, degree and extent of the contamination;

(B) to define all possible pathways for contaminant migration;

(C) to present data that quantify the amounts of contaminants migrating along each pathway;

(D) to define all relevant sensitive receptors, including but not limited to public or private water supplies, surface waters, wetlands, sensitive ecological areas, outdoor and indoor air, and enclosed spaces such as basements, sewers and utility corridors;

(E) to determine the risk of contamination to human health and the environment;

(F) to gather sufficient information to identify appropriate abatement, removal, remediation and monitoring activities;

(G) to gather sufficient information to provide a preliminary recommendation, with justification, for abatement, removal, remediation and monitoring activities.

(2) The secretary shall evaluate the site investigation work plan and shall either approve, approve with conditions or disapprove the site investigation work plan. The secretary may contract with private engineers, hydrologists or site professionals of the secretary's sole choice to provide the investigation and review required by this subsection. The secretary shall set such insurance, bond or other surety requirements of these professionals as the secretary may deem appropriate. The costs and expenses of any professionals retained by the secretary for this investigation shall be the sole responsibility of the eligible person. If the secretary approves the site investigation work plan with conditions or disapproves, the eligible person or successor shall resubmit a revised site investigation work plan for approval or shall withdraw from the program. If the secretary requests additional or corrected information at any time during the evaluation of the site investigation work plan, the eligible person or successor shall submit the information requested or withdraw from the program.

(3) Together with notice of approval of a site investigation work plan, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person or successor, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person or successor has completed the various stages of the process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff. After the secretary approves the site investigation work plan, the eligible person or successor shall perform the site investigation in accordance with the approved work plan and all applicable law.

(4) After completion of the site investigation, the eligible person or successor shall submit a site investigation report which describes the information gathered and provides recommendations addressing the objectives identified in subdivisions (g)(1)(A) through (G) of this section. The secretary may approve the site investigation report, or may require revisions to the report, further site investigation work under an amended site investigation work plan, or both, prior to approval of the report.

(5) If the approved site investigation report concludes that no further investigation, abatement, removal, remediation or monitoring activities are required to adequately protect human health and the environment and to meet all applicable cleanup standards, then the eligible person or successor may request a determination from the secretary that no additional investigation, abatement, removal, remediation, and monitoring activities are required.

(6) The secretary may determine that no abatement, removal, remediation or monitoring activities are required if the secretary determines all of the following:

(A) Redevelopment and reuse of the property will not cause, allow, contribute to, or worsen any release or threatened release of hazardous materials at the property.

(B) The releases or threatened releases that are not abated, removed or remediated do not pose an unacceptable risk to human health and the environment.

(C) The eligible person, or successor, agrees in writing, which shall be binding upon any successor, to cooperate with, and to provide access to the secretary, and to any person liable under section 6615 of this title, acting subject to the approval of the secretary, for the purpose of taking any investigation, abatement, removal, remediation or monitoring activities at the property.

(h) Submittal and approval of corrective action plan.

(1) If the approved site investigation report concludes that abatement, removal, remediation, or monitoring activities are required to adequately protect human health and the environment and to meet all applicable cleanup standards, the eligible person or successor shall submit a corrective action plan, which shall clearly describe the basis and details of a proposed cleanup strategy to insure technical feasibility, effective engineering design, reasonable costs, and protection of human health and the environment. The corrective action plan shall include the following elements:

(A) A description of all releases or threatened releases existing at the property.

(B) A proposal for abatement, removal, and remediation of any release or threatened release and any condition which has led or could lead to a release or threatened release.

(C) A proposal for continuing monitoring of the property during and after the investigation, abatement, removal and remediation activities are completed.

(D) A description of applicable state standards, including any standards establishing acceptable concentrations of constituents in soils, surface water, or groundwater and, for constituents present at the site for which such state standards do not exist, a description of the cleanup levels to be attained and any current risk to human health or the environment based upon the proposed use and any likely future use of the property.

(E) Plans for all of the following;

(i) Quality assurance.

(ii) Sampling and analysis.

(iii) Health and safety considerations.

(iv) Data management and recordkeeping.

(F) A proposed schedule for the implementation of each task set forth in the proposed corrective action plan.

(2) The secretary shall evaluate the corrective action plan, and shall either approve, approve with conditions, or disapprove the corrective action plan. The secretary may contract with private engineers, hydrologists or site professionals of the secretary's sole choice to provide the investigation and review required by this subsection. The secretary shall set such insurance, bond or other surety requirements of these professionals as the secretary may deem appropriate. The costs and expenses of any professionals retained by the secretary for this investigation shall be the sole responsibility of the eligible

person. If the secretary approves with conditions or disapproves the corrective action plan, the eligible person or successor shall submit a revised corrective action plan for approval or shall withdraw from the program. If the secretary requests additional or corrected information at any time during evaluation of the corrective action plan, the eligible person or successor shall submit the information requested or withdraw from the program.

(3) The secretary may approve a corrective action plan for all, or a portion of, the releases or threatened releases at the property, if the secretary determines all of the following:

(A) Activities in accordance with the approved corrective action plan, and the redevelopment and use of the property will not cause, allow, contribute to, or worsen any release or threatened release of hazardous materials.

(B) The corrective action plan provides for all investigation, abatement, removal, remediation and monitoring activities required to protect human health and the environment and to meet all applicable cleanup standards.

(C) The eligible person, or successor, in writing, which shall be binding upon any successor, agrees:

(i) to comply with all rules and procedures of the secretary and to obtain all necessary permits, certifications and other required authorizations prior to beginning corrective action plan activities;

(ii) to cooperate with the secretary throughout the performance of investigation, abatement, removal, remediation and monitoring activities;

(iii) to cooperate with, and to provide access to, the secretary for the purpose of taking any investigation, abatement, removal, remediation or monitoring activities at the property; and

(iv) to cooperate with, and to provide access to any person liable under section 6615 of this section, acting subject to the approval of the secretary, for the purpose of taking any investigation, abatement, removal, remediation or monitoring activities at the property.

(4) If the secretary approves a corrective action plan that addresses only a portion of the releases or threatened releases at the property, the secretary must find that the releases or threatened releases that are not abated, removed or remediated pursuant to the corrective action plan do not pose an unacceptable risk to human health and the environment.

(5) Prior to approval of the corrective action plan submitted pursuant to subdivision (h)(1) of this section, the secretary shall provide public notice, which may be satisfied by a notice published in a local newspaper generally circulated in the area where the property is located and written notice to the town clerk for the town in which the property is located, provided together with a request that the notice be posted in a conspicuous place. The notice shall set forth any proposed abatement, investigation, remediation, removal, and monitoring activities; shall state that the secretary is considering approval of a corrective action plan providing for such activities; shall request public comment on the proposed activities within 15 days after publication; and shall state the name, telephone number and address of an agency official able to answer questions and receive comments on the matter. The public comment period may be extended by the secretary if public interest warrants the extension. The secretary shall review public comment, if any, prior to approval of the corrective action plan. The decision of the secretary as to whether a corrective action plan should be approved is within the secretary's sole discretion and is final. Upon approval of a corrective action plan, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person or successor, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person or successor has completed the various stages of the

process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff.

(A) With respect to properties in the pilot project established under subdivision (a)(1) of this section, except in the case of a corrective action plan adjustment as provided under subdivision (h)(5)(B) of this section, once the secretary has approved a corrective action plan, the secretary may not amend the plan, unless amendment is requested by an eligible person or successor.

(B) With respect to properties in the pilot project established under subdivision (a)(1) of this section, the secretary may amend the approved plan by requiring a one-time corrective action plan adjustment, as deemed in the public interest by the secretary, which may increase the costs of completing the corrective action plan by no more than 30 percent. In this instance, this amended plan is the plan that must be performed successfully before obtaining a certificate of completion, unless further amendment is requested by an eligible person or successor.

(C) With respect to properties in the pilot project established under subdivision (a)(1) of this section, notwithstanding the fact that the secretary issues a certificate of completion under subsection (k) of this section, if at any time the secretary finds that a completed corrective action plan fails to adequately protect human health and the environment and fails to meet all applicable state and federal cleanup standards, the secretary may:

(i) exercise authority under section 6615 of this title against any liable person, except the person or the successor of the person that completed the corrective action plan; and

(ii) perform all investigation, abatement, removal, remediation, or monitoring activities necessary to ensure the property meets the standards.

(6) Upon approval of a corrective action plan, and any amendments to that plan, the secretary shall complete and present to the eligible person or successor a brief document titled, "Notice of approved corrective action plan for contaminated property." The document shall summarize the nature of the contamination identified on the property and the major components of the corrective action plan, and shall state that the property is subject to the "Redevelopment of Contaminated Property Program." If it is possible that future uses of the property may be restricted, the document shall state that fact. The document shall signify where any approved corrective action plan may be reviewed in its entirety. The person receiving a notice of approved corrective action plan for contaminated property shall file it in the land records for the town in which the property is located.

(i) Performance of the corrective action plan.

(1) The eligible person or successor shall perform all investigation, abatement, remediation, removal, and monitoring activities in accordance with the approved corrective action plan and all amendments to the plan, and with all applicable local, state and federal law. The corrective action plan may be amended during its performance, subject to approval by the secretary. At any time during the performance of a corrective action plan, except as otherwise provided in this section with respect to properties participating in the pilot project created under subsection (a) of this section, the plan may be amended, as necessary to attain the cleanup levels established in the corrective action plan.

(2) If prior to the issuance of the certificate of completion, the eligible person or a successor, through the nonreckless performance of an approved site investigation or corrective action plan, worsens an existing release or threatened release of hazardous materials at the property, or causes a new release or threatened release, the eligible person or successor shall immediately notify the secretary, prepare and submit to the secretary an amendment to the corrective action plan for investigation, abatement, removal, remediation and monitoring of such release or threatened release and carry out the amended corrective

action plan as approved by the secretary. Wilful misconduct in the performance of an approved plan may constitute reckless performance of that plan.

(j) Obligations.

(1) Upon depletion of the $5,000.00 fee paid pursuant to subdivision (g)(1) of this section, an eligible person or successor shall pay the department for additional costs of the secretary's review and oversight of the performance of the site investigation or corrective action plan. Unless another payment schedule has been approved by the secretary, these payments shall be made within 30 days of receipt from the secretary, of a quarterly bill which itemizes additional costs allowed under this section. If the fee is not depleted by the time of the issuance of a certificate of completion, the remainder shall be reimbursed to the eligible person or successor, as determined by the secretary.

(2) The eligible person or successor shall:

(A) perform all of the activities in the approved site investigation work plan and the approved corrective action plan, and all amendments to either plan;

(B) defend, indemnify, save and hold harmless the state from all claims and causes of action related to, or arising from, acts or omissions of the eligible person or successor in performing the site investigation and corrective action plan;

(C) not sue the state for any claims or causes of action related to, or arising from, acts or omissions of the eligible person or successor in performing the site investigation and corrective action plan and shall not sue the state for reimbursement of funds expended, except for reimbursement of fees not expended by the state and of costs improperly required by and paid to the secretary by the eligible person or successor, or seek any other costs, damages or attorney's fees from the state with respect to any activities taken or costs incurred pursuant to this program;

(D) not sue the state for any claims or causes of action related to, or arising from hazardous material contamination at the property, except to the extent that the state may be liable under section 6615 of this title;

(E) provide to the state all documents and information relating to the performance of the investigation, abatement, removal, remediation and monitoring activities;

(F) disclose all information known to it, or in its possession or control, which relates to all releases or threatened releases of hazardous materials at the property or which might affect the design of, or the secretary's review of, the site investigation work plan and corrective action plan or the secretary's issuance of the certificate of completion; and

(G) cooperate with and provide access to the secretary, and to any person liable under section 6615 of this title, acting subject to the approval of the secretary, for the purpose of taking any investigation, abatement, removal, remediation or monitoring activities at the property.

(3) If an eligible person or successor withdraws from the program after commencement of the site investigation activities and prior to obtaining a certificate of completion, the eligible person or successor shall not leave the property in a condition that presents a greater threat to human health and the environment than existed before commencement of site investigation activities.

(4) An eligible person and any successor shall fulfill all agreements entered under this section.

(5) At any stage of the process established under this section, the secretary may require an eligible person or successor to provide such financial guarantees as the secretary deems appropriate, including letters of credit or performance bonds, for the purpose of ensuring completion of all activities approved or directed by the secretary under this section, and ensuring fulfillment of all obligations assumed under this section.

(k) Certificate of completion.

(1) After completion of all of the activities required under the corrective action plan, the eligible person or successor shall file a completion report with the secretary. The completion report shall describe the activities performed under the corrective action plan and any amendments to the plan; describe any problems encountered; and include a certification by the eligible person or successor that the activities were performed in accordance with the corrective action plan. Upon receipt of the completion report, the secretary will determine if the corrective action plan has been completed and if additional work is required; except that, in case of a project participating in the pilot project created under subsection (a) of this section, the secretary may only determine whether additional work is required in order to complete the plan. The eligible person or successor shall perform any additional activities specified by the secretary necessary to complete the corrective action plan and shall submit a new completion report. Once the secretary determines that the eligible person or successor has successfully completed the corrective action plan, and has paid all fees and costs due under this section, the secretary shall issue a certificate of completion, which shall certify that the work is completed and shall include a description of any land use restrictions and any other conditions required by the corrective action plan.

(2) If the secretary determines, after a request from the eligible person or successor pursuant to subdivision (g)(5) of this section, that no further investigation, abatement, removal, remediation or monitoring activities are required, the secretary shall issue a certificate of completion, which shall include a description of any required land use restrictions.

(3) A certificate of completion issued pursuant to this subsection shall contain a statement that the protection from liability provided in this section is in effect. The person receiving the certificate of completion shall file it in the land records for the town in which the property is located.

(l) Program funding.

(1) Creation of fund. There is created a brownfields revitalization fund, which shall be a special fund created under subchapter 5 of chapter 7 of Title 32, to be administered by the secretary of the agency of commerce and community development to aid applicants in the redevelopment of contaminated properties program with the characterization, assessment and remediation of sites. Money received by the secretary of the agency of natural resources for assistance rendered in connection with the program shall be deposited in the redevelopment of contaminated properties account of the environmental contingency fund established in section 1283 of this title.

(2) Contents of fund. The fund shall be comprised of the following:

(A) such state or federal funds as may be appropriated by the general assembly; and

(B) any gifts, grants, or other contributions to the brownfields revitalization fund.

(3) Applications for assistance. Program applicants may apply to the secretary of commerce and community development for assistance from the brownfields revitalization fund in the form of a grantor loan to complete characterization, assessment or remediation of a site as part of a plan approved by the secretary of natural resources under this program.

(4) Evaluation of application. In determining whether a grant or a loan from the brownfields revitalization fund is warranted, the secretary of commerce and community development, in consultation with the secretary of natural resources, shall consider:

(A) the extent to which the proposed project will facilitate the identification and reduction of threats to human health and the environment that may be associated with exposure to hazardous materials, pollutants or contaminants;

(B) the extent to which the proposed project will facilitate the use or reuse of existing infrastructure;

(C) the potential for the proposed project to stimulate economic development;

(D) the extent to which the proposed project will respond to the housing needs of a community or region;

(E) the level of participation by a local community in the process of making decisions relating to remediation and future use of the brownfields site;

(F) the extent to which a grant or a loan will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfields site is located, because of the small population or low income of the community;

(G) the extent to which a grant or loan will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property or other property used for nonprofit purposes;

(H) the extent to which the grant or loan will cause a more balanced geographic distribution of awards from the brownfields revitalization fund.

(5) Grants.

(A) The secretary of commerce and community development may award an applicant a grant not to exceed $50,000.00 for the characterization and assessment of a site.

(B) The secretary of commerce and community development may award an applicant a grant not to exceed $50,000.00 for the characterization and assessment of a site.

(C) The secretary of commerce and community development may make a grant to assist an applicant in purchasing environmental insurance relating to the performance of the characterization, assessment or remediation of a brownfields site in accordance with a corrective action plan approved by the secretary of natural resources.

(D) The secretary of commerce and community development may use a portion of the brownfields revitalization fund to develop a risk-sharing pool, an indemnity pool, or an insurance mechanism to provide financial assistance to applicants.

(6) Loans.

(A) For the purpose of this chapter, "VEDA" means the Vermont economic development authority, which is authorized to make loans on behalf of the state under this section after the secretary of commerce and community development, in consultation with the secretary of natural resources, has first determined an applicant eligible to apply to VEDA for a loan. These loans shall be issued and administered by VEDA, pursuant to this chapter, and VEDA's enabling authority, pursuant to chapter 12 of this title. The secretary of commerce and community development, in consultation with the secretary of natural resources and the

VEDA manager, shall annually determine the amount of the brownfields revitalization fund available to VEDA for loans under this section.

(B) An applicant may use the proceeds of a loan from VEDA for characterization, assessment or remediation of a site. A loan may not be in an amount greater than $250,000.00.

(C) Proceeds from repayment of loans shall be deposited in the brownfields revitalization fund and shall be available for additional grants or loans in accordance with this section.

(D) VEDA may make loans to applicants on behalf of the state for one or more of the purposes set forth in this subsection. Each such loan shall be made subject to the following conditions:

(i) Repayment shall commence no later than one year after completion of the project for which loan funds have been applied.

(ii) The rate of interest charged for loans shall be set by VEDA in consultation with the secretary of commerce and community development, and shall be a rate that is sufficiently attractive to advance the purposes of this section. The interest rate set by VEDA may be less than the prevailing borrowing rates available to similarly situated applicants from private lenders, but not less than zero percent.

(iii) Loans made to applicants by VEDA on behalf of the state under this section shall be made in accordance with the terms and conditions specified in a loan agreement to be executed by VEDA and the applicant. The loan agreement shall specify the terms and conditions of the loan and repayment by the applicant, as well as other terms and conditions determined necessary by VEDA and the secretary of natural resources or the secretary of commerce and community development.

(iv) Disbursement of loan proceeds shall be based on certification by the loan recipient demonstrating that costs for which reimbursement is requested have been incurred or paid by the recipient for activities under the plan approved by the secretary of natural resources. The recipient shall provide supporting evidence of payment upon the request of VEDA. Interim financing charges or short-term interest costs may constitute an allowable cost of a project for which a loan is extended. In the event short-term financing is unavailable to the applicant, VEDA may make interim loan disbursements to the applicant and its general contractor as co-payees upon submission of a certified request for payment, supported by actual invoices or other evidence satisfactory to VEDA, of costs incurred.

(v) VEDA may include such additional requirements in the loan agreement as it determines necessary for the proper administration of the brownfields revitalization fund, and which are consistent with applicable state and federal law and with other programs administered by VEDA under chapter 12 of this title.

(vi) In the event of default, any amounts owed upon the loan shall be considered a debt for the purposes of subdivision 5932(4) of Title 32. VEDA may recover such debt pursuant to the set-off debt collection remedy established under sections 5833 and 5934 of Title 32.

(E) Qualifications for eligibility. No loan to an applicant shall be made under this section until:

(i) the applicant has certified to VEDA that all state and federal permits and licenses necessary to undertake the project for which financing has been sought have been or will be obtained prior to VEDA disbursing funds under the loan; and

(ii) the secretary of commerce and community development has certified to VEDA that the applicant and the project are eligible for financing or assistance under this section, and that the project has priority for receipt of financial assistance.

(F) Loan priorities. The secretary of commerce and community development, in consultation with the secretary of natural resources, shall prepare at least annually a list of projects, ranked in priority order, that are eligible for financial assistance under this section. In establishing these priorities, the secretary of commerce and community development, at a minimum, shall consider the criteria set forth in subdivision (4) of this subsection, as well as the following:

(i) the severity of any health or environmental hazard to be abated;

(ii) the population to be served; and

(iii) the readiness of the project to proceed to the next planning or construction step.

(G) Contractual authority; reports.

(i) The secretary of commerce and community development or the secretary of natural resources and VEDA may enter into agreements on behalf of the state with agencies of the United States as may be necessary to obtain grants and awards in furtherance of the stated purposes of the brownfields revitalization fund created under this section, provided that any such grant or award has been approved pursuant to section 5 of Title 32.

(ii) Annually, by January 15, the secretary of commerce and community development and VEDA shall submit a report to members of the joint fiscal committee setting out the balance of the fund created under this section, grant and loan awards made to date, funds anticipated to be made available in the coming year, and any other matters of interest.

(H) Liability against default. Under no circumstances shall the state or VEDA become responsible for owning or operating a project or for completing a corrective action plan when the grant or loan recipient defaults on a loan obligation, abandons the project site, or fails to complete a corrective action plan to the satisfaction of the secretary of natural resources.

(m) Coordination with federal program. The secretary shall endeavor to coordinate the program created under this section with related federal programs, and to enter appropriate memoranda of understanding on the matter. (Added 1995, No. 44, § 1, eff. April 20, 1995; amended 1997, No. 80 (Adj. Sess.), §§ 1-11; No. 120 (Adj. Sess.), § 6; 2001, No. 142 (Adj. Sess.), §§ 254a, 254b, eff. June 21, 2002.)

Appendix D: Federal Small Business Liability Relief and Brownfields Revitalization Act

One Hundred Seventh Congress
of the
United States of America
AT THE FIRST SESSION

Begun and held at the City of Washington on Wednesday,

the third day of January, two thousand and one

An Act

To provide certain relief for small businesses from liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and to amend such Act to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization, to enhance State response programs, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Small Business Liability Relief and Brownfields Revitalization Act'.

TITLE I--SMALL BUSINESS LIABILITY PROTECTION

SEC. 101. SHORT TITLE.

This title may be cited as the `Small Business Liability Protection Act'.

SEC. 102. SMALL BUSINESS LIABILITY RELIEF.

(a) EXEMPTIONS- Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following new subsections:

`(o) DE MICROMIS EXEMPTION-

`(1) IN GENERAL- Except as provided in paragraph (2), a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under this Act if liability is based solely on paragraph (3) or (4) of subsection (a), and the person, except as provided in paragraph (4) of this subsection, can demonstrate that--

`(A) the total amount of the material containing hazardous substances that the person arranged for disposal or treatment of, arranged with a transporter for transport for disposal or treatment of, or accepted for transport for disposal or treatment, at the facility was less than 110 gallons of liquid materials or less than 200 pounds of solid materials (or such greater or lesser amounts as the Administrator may determine by regulation); and

`(B) all or part of the disposal, treatment, or transport concerned occurred before April 1, 2001.

`(2) EXCEPTIONS- Paragraph (1) shall not apply in a case in which--

`(A) the President determines that--

`(i) the materials containing hazardous substances referred to in paragraph (1) have contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility; or

`(ii) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility; or

`(B) a person has been convicted of a criminal violation for the conduct to which the exemption would apply, and that conviction has not been vitiated on appeal or otherwise.

`(3) NO JUDICIAL REVIEW- A determination by the President under paragraph (2)(A) shall not be subject to judicial review.

`(4) NONGOVERNMENTAL THIRD-PARTY CONTRIBUTION ACTIONS- In the case of a contribution action, with respect to response costs at a facility on the National Priorities List, brought by a party, other than a Federal, State, or local government, under this Act, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraph (1)(A) and (B) of this subsection are not met.

`(p) MUNICIPAL SOLID WASTE EXEMPTION-

`(1) IN GENERAL- Except as provided in paragraph (2) of this subsection, a person shall not be liable, with respect to response costs at a facility on the National Priorities List, under paragraph (3) of subsection (a) for municipal solid waste disposed of at a facility if the person, except as provided in paragraph (5) of this subsection, can demonstrate that the person is--

`(A) an owner, operator, or lessee of residential property from which all of the person's municipal solid waste was generated with respect to the facility;

`(B) a business entity (including a parent, subsidiary, or affiliate of the entity) that, during its 3 taxable years preceding the date of transmittal of written notification from the President of its potential liability under this section, employed on average not more than 100 full-time individuals, or the equivalent thereof, and that is a small business concern (within the meaning of the Small Business Act (15 U.S.C. 631 et seq.)) from which was generated all of the municipal solid waste attributable to the entity with respect to the facility; or

`(C) an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that, during its taxable year preceding the date of transmittal of written notification from the President of its potential liability under this section, employed not more than 100 paid individuals at the location from which was generated all of the municipal solid waste attributable to the organization with respect to the facility.

For purposes of this subsection, the term `affiliate' has the meaning of that term provided in the definition of `small business concern' in regulations promulgated by the Small Business Administration in accordance with the Small Business Act (15 U.S.C. 631 et seq.).

`(2) EXCEPTION- Paragraph (1) shall not apply in a case in which the President determines that--

`(A) the municipal solid waste referred to in paragraph (1) has contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration with respect to the facility;

`(B) the person has failed to comply with an information request or administrative subpoena issued by the President under this Act; or

`(C) the person has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the facility.

`(3) NO JUDICIAL REVIEW- A determination by the President under paragraph (2) shall not be subject to judicial review.

`(4) DEFINITION OF MUNICIPAL SOLID WASTE-

`(A) IN GENERAL- For purposes of this subsection, the term `municipal solid waste' means waste material--

`(i) generated by a household (including a single or multifamily residence); and

`(ii) generated by a commercial, industrial, or institutional entity, to the extent that the waste material--

`(I) is essentially the same as waste normally generated by a household;

`(II) is collected and disposed of with other municipal solid waste as part of normal municipal solid waste collection services; and

`(III) contains a relative quantity of hazardous substances no greater than the relative quantity of hazardous substances contained in waste material generated by a typical single-family household.

`(B) EXAMPLES- Examples of municipal solid waste under subparagraph (A) include food and yard waste, paper, clothing, appliances, consumer product packaging, disposable diapers, office supplies, cosmetics, glass and metal food containers, elementary or secondary school science laboratory waste, and household hazardous waste.

`(C) EXCLUSIONS- The term `municipal solid waste' does not include--

`(i) combustion ash generated by resource recovery facilities or municipal incinerators; or

`(ii) waste material from manufacturing or processing operations (including pollution control operations) that is not essentially the same as waste normally generated by households.

`(5) BURDEN OF PROOF- In the case of an action, with respect to response costs at a facility on the National Priorities List, brought under section 107 or 113 by--

`(A) a party, other than a Federal, State, or local government, with respect to municipal solid waste disposed of on or after April 1, 2001; or

`(B) any party with respect to municipal solid waste disposed of before April 1, 2001, the burden of proof shall be on the party bringing the action to demonstrate that the conditions described in paragraphs (1) and (4) for exemption for entities and organizations described in paragraph (1)(B) and (C) are not met.

`(6) CERTAIN ACTIONS NOT PERMITTED- No contribution action may be brought by a party, other than a Federal, State, or local government, under this Act with respect to circumstances described in paragraph (1)(A).

`(7) COSTS AND FEES- A nongovernmental entity that commences, after the date of the enactment of this subsection, a contribution action under this Act shall be liable to the defendant for all reasonable costs of defending the action, including all reasonable attorney's fees and expert witness fees, if the defendant is not liable for contribution based on an exemption under this subsection or subsection (o).'.

(b) EXPEDITED SETTLEMENT- Section 122(g) of such Act (42 U.S.C. 9622(g)) is amended by adding at the end the following new paragraphs:

`(7) REDUCTION IN SETTLEMENT AMOUNT BASED ON LIMITED ABILITY TO PAY-

`(A) IN GENERAL- The condition for settlement under this paragraph is that the potentially responsible party is a person who demonstrates to the President an inability or a limited ability to pay response costs.

`(B) CONSIDERATIONS- In determining whether or not a demonstration is made under subparagraph (A) by a person, the President shall take into consideration the ability of the person to pay response costs and still maintain its basic business operations, including consideration of the overall financial condition of the person and demonstrable constraints on the ability of the person to raise revenues.

`(C) INFORMATION- A person requesting settlement under this paragraph shall promptly provide the President with all relevant information needed to determine the ability of the person to pay response costs.

`(D) ALTERNATIVE PAYMENT METHODS- If the President determines that a person is unable to pay its total settlement amount at the time of settlement, the

President shall consider such alternative payment methods as may be necessary or appropriate.

`(8) ADDITIONAL CONDITIONS FOR EXPEDITED SETTLEMENTS-

`(A) WAIVER OF CLAIMS- The President shall require, as a condition for settlement under this subsection, that a potentially responsible party waive all of the claims (including a claim for contribution under this Act) that the party may have against other potentially responsible parties for response costs incurred with respect to the facility, unless the President determines that requiring a waiver would be unjust.

`(B) FAILURE TO COMPLY- The President may decline to offer a settlement to a potentially responsible party under this subsection if the President determines that the potentially responsible party has failed to comply with any request for access or information or an administrative subpoena issued by the President under this Act or has impeded or is impeding, through action or inaction, the performance of a response action with respect to the facility.

`(C) RESPONSIBILITY TO PROVIDE INFORMATION AND ACCESS- A potentially responsible party that enters into a settlement under this subsection shall not be relieved of the responsibility to provide any information or access requested in accordance with subsection (e)(3)(B) or section 104(e).

`(9) BASIS OF DETERMINATION- If the President determines that a potentially responsible party is not eligible for settlement under this subsection, the President shall provide the reasons for the determination in writing to the potentially responsible party that requested a settlement under this subsection.

`(10) NOTIFICATION- As soon as practicable after receipt of sufficient information to make a determination, the President shall notify any person that the President determines is eligible under paragraph (1) of the person's eligibility for an expedited settlement.

`(11) NO JUDICIAL REVIEW- A determination by the President under paragraph (7), (8), (9), or (10) shall not be subject to judicial review.

`(12) NOTICE OF SETTLEMENT- After a settlement under this subsection becomes final with respect to a facility, the President shall promptly notify potentially responsible parties at the facility that have not resolved their liability to the United States of the settlement.'.

SEC. 103. EFFECT ON CONCLUDED ACTIONS.

The amendments made by this title shall not apply to or in any way affect any settlement lodged in, or judgment issued by, a United States District Court, or any administrative settlement or order entered into or issued by the United States or any State, before the date of the enactment of this Act.

TITLE II--BROWNFIELDS REVITALIZATION AND ENVIRONMENTAL RESTORATION

SEC. 201. SHORT TITLE.

This title may be cited as the `Brownfields Revitalization and Environmental Restoration Act of 2001'.

Subtitle A--Brownfields Revitalization Funding

SEC. 211. BROWNFIELDS REVITALIZATION FUNDING.

(a) DEFINITION OF BROWNFIELD SITE- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) is amended by adding at the end the following:

`(39) BROWNFIELD SITE-

`(A) IN GENERAL- The term `brownfield site' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

`(B) EXCLUSIONS- The term `brownfield site' does not include--

`(i) a facility that is the subject of a planned or ongoing removal action under this title;

`(ii) a facility that is listed on the National Priorities List or is proposed for listing;

`(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under this Act;

`(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1321), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

`(v) a facility that--

`(I) is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

`(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

`(vi) a land disposal unit with respect to which--

`(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

`(II) closure requirements have been specified in a closure plan or permit;

`(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

`(viii) a portion of a facility--

`(I) at which there has been a release of polychlorinated biphenyls; and

`(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

`(ix) a portion of a facility, for which portion, assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986.

`(C) SITE-BY-SITE DETERMINATIONS- Notwithstanding subparagraph (B) and on a site-by-site basis, the President may authorize financial assistance under section 104(k) to an eligible entity at a site included in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B) if the President finds that financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes.

`(D) ADDITIONAL AREAS- For the purposes of section 104(k), the term `brownfield site' includes a site that--

`(i) meets the definition of `brownfield site' under subparagraphs (A) through (C); and

`(ii)(I) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

`(II)(aa) is contaminated by petroleum or a petroleum product excluded from the definition of `hazardous substance' under section 101; and

`(bb) is a site determined by the Administrator or the State, as appropriate, to be--

`(AA) of relatively low risk, as compared with other petroleum-only sites in the State; and

`(BB) a site for which there is no viable responsible party and which will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

`(cc) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

`(III) is mine-scarred land.'.

(b) BROWNFIELDS REVITALIZATION FUNDING- Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9604) is amended by adding at the end the following:

`(k) BROWNFIELDS REVITALIZATION FUNDING-

`(1) DEFINITION OF ELIGIBLE ENTITY- In this subsection, the term `eligible entity' means--

`(A) a general purpose unit of local government;

`(B) a land clearance authority or other quasi-governmental entity that operates under the supervision and control of or as an agent of a general purpose unit of local government;

`(C) a government entity created by a State legislature;

`(D) a regional council or group of general purpose units of local government;

`(E) a redevelopment agency that is chartered or otherwise sanctioned by a State;

`(F) a State;

`(G) an Indian Tribe other than in Alaska; or

`(H) an Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 and following) and the Metlakatla Indian community.

`(2) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT GRANT PROGRAM-

`(A) ESTABLISHMENT OF PROGRAM- The Administrator shall establish a program to--

`(i) provide grants to inventory, characterize, assess, and conduct planning related to brownfield sites under subparagraph (B); and

`(ii) perform targeted site assessments at brownfield sites.

`(B) ASSISTANCE FOR SITE CHARACTERIZATION AND ASSESSMENT-

`(i) IN GENERAL- On approval of an application made by an eligible entity, the Administrator may make a grant to the eligible entity to be used for programs to inventory, characterize, assess, and conduct planning related to one or more brownfield sites.

`(ii) SITE CHARACTERIZATION AND ASSESSMENT- A site characterization and assessment carried out with the use of a grant under clause (i) shall be performed in accordance with section 101(35)(B).

`(3) GRANTS AND LOANS FOR BROWNFIELD REMEDIATION-

`(A) GRANTS PROVIDED BY THE PRESIDENT- Subject to paragraphs (4) and (5), the President shall establish a program to provide grants to--

`(i) eligible entities, to be used for capitalization of revolving loan funds; and

`(ii) eligible entities or nonprofit organizations, where warranted, as determined by the President based on considerations under subparagraph (C), to be used directly for remediation of one or more brownfield sites owned by the entity or organization that receives the grant and in amounts not to exceed $200,000 for each site to be remediated.

`(B) LOANS AND GRANTS PROVIDED BY ELIGIBLE ENTITIES- An eligible entity that receives a grant under subparagraph (A)(i) shall use the grant funds to provide assistance for the remediation of brownfield sites in the form of--

`(i) one or more loans to an eligible entity, a site owner, a site developer, or another person; or

`(ii) one or more grants to an eligible entity or other nonprofit organization, where warranted, as determined by the eligible entity that is providing the assistance, based on considerations under subparagraph (C), to remediate sites owned by the eligible entity or nonprofit organization that receives the grant.

`(C) CONSIDERATIONS- In determining whether a grant under subparagraph (A)(ii) or (B)(ii) is warranted, the President or the eligible entity, as the case may be, shall take into consideration--

`(i) the extent to which a grant will facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

`(ii) the extent to which a grant will meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

`(iii) the extent to which a grant will facilitate the use or reuse of existing infrastructure;

`(iv) the benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation; and

`(v) such other similar factors as the Administrator considers appropriate to consider for the purposes of this subsection.

`(D) TRANSITION- Revolving loan funds that have been established before the date of the enactment of this subsection may be used in accordance with this paragraph.

`(4) GENERAL PROVISIONS-

`(A) MAXIMUM GRANT AMOUNT-

`(i) BROWNFIELD SITE CHARACTERIZATION AND ASSESSMENT-

`(I) IN GENERAL- A grant under paragraph (2) may be awarded to an eligible entity on a community-wide or site-by-site basis, and shall not exceed, for any individual brownfield site covered by the grant, $200,000.

`(II) WAIVER- The Administrator may waive the $200,000 limitation under subclause (I) to permit the brownfield site to receive a grant of not to exceed $350,000, based on the anticipated level of contamination, size, or status of ownership of the site.

`(ii) BROWNFIELD REMEDIATION- A grant under paragraph (3)(A)(i) may be awarded to an eligible entity on a community-wide or site-by-site basis, not to exceed $1,000,000 per eligible entity. The Administrator may make an additional grant to an eligible entity described in the previous sentence for any year after the year for which the initial grant is made, taking into consideration--

`(I) the number of sites and number of communities that are addressed by the revolving loan fund;

`(II) the demand for funding by eligible entities that have not previously received a grant under this subsection;

`(III) the demonstrated ability of the eligible entity to use the revolving loan fund to enhance remediation and provide funds on a continuing basis; and

`(IV) such other similar factors as the Administrator considers appropriate to carry out this subsection.

`(B) PROHIBITION-

`(i) IN GENERAL- No part of a grant or loan under this subsection may be used for the payment of--

`(I) a penalty or fine;

`(II) a Federal cost-share requirement;

`(III) an administrative cost;

`(IV) a response cost at a brownfield site for which the recipient of the grant or loan is potentially liable under section 107; or

`(V) a cost of compliance with any Federal law (including a Federal law specified in section 101(39)(B)), excluding the cost of compliance with laws applicable to the cleanup.

`(ii) EXCLUSIONS- For the purposes of clause (i)(III), the term `administrative cost' does not include the cost of--

`(I) investigation and identification of the extent of contamination;

`(II) design and performance of a response action; or

`(III) monitoring of a natural resource.

`(C) ASSISTANCE FOR DEVELOPMENT OF LOCAL GOVERNMENT SITE REMEDIATION PROGRAMS- A local government that receives a grant under this subsection may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program that may include--

`(i) monitoring the health of populations exposed to one or more hazardous substances from a brownfield site; and

`(ii) monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance from a brownfield site.

`(D) INSURANCE- A recipient of a grant or loan awarded under paragraph (2) or (3) that performs a characterization, assessment, or remediation of a brownfield site may use a portion of the grant or loan to purchase insurance for the characterization, assessment, or remediation of that site.

`(5) GRANT APPLICATIONS-

`(A) SUBMISSION-

`(i) IN GENERAL-

`(I) APPLICATION- An eligible entity may submit to the Administrator, through a regional office of the Environmental Protection Agency and in such form as the Administrator may require, an application for a grant under this subsection for one or more brownfield sites (including information on the criteria used by the Administrator to rank applications under subparagraph (C), to the extent that the information is available).

`(II) NCP REQUIREMENTS- The Administrator may include in any requirement for submission of an application under subclause (I) a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection.

`(ii) COORDINATION- The Administrator shall coordinate with other Federal agencies to assist in making eligible entities aware of other available Federal resources.

`(iii) GUIDANCE- The Administrator shall publish guidance to assist eligible entities in applying for grants under this subsection.

`(B) APPROVAL- The Administrator shall--

`(i) at least annually, complete a review of applications for grants that are received from eligible entities under this subsection; and

`(ii) award grants under this subsection to eligible entities that the Administrator determines have the highest rankings under the ranking criteria established under subparagraph (C).

`(C) RANKING CRITERIA- The Administrator shall establish a system for ranking grant applications received under this paragraph that includes the following criteria:

`(i) The extent to which a grant will stimulate the availability of other funds for environmental assessment or remediation, and subsequent reuse, of an area in which one or more brownfield sites are located.

`(ii) The potential of the proposed project or the development plan for an area in which one or more brownfield sites are located to stimulate economic development of the area on completion of the cleanup.

`(iii) The extent to which a grant would address or facilitate the identification and reduction of threats to human health and the environment, including threats in areas in which there is a greater-than-normal incidence of diseases or conditions (including cancer, asthma, or birth defects) that may be associated with exposure to hazardous substances, pollutants, or contaminants.

`(iv) The extent to which a grant would facilitate the use or reuse of existing infrastructure.

`(v) The extent to which a grant would facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped property, recreational property, or other property used for nonprofit purposes.

`(vi) The extent to which a grant would meet the needs of a community that has an inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community.

`(vii) The extent to which the applicant is eligible for funding from other sources.

`(viii) The extent to which a grant will further the fair distribution of funding between urban and nonurban areas.

`(ix) The extent to which the grant provides for involvement of the local community in the process of making decisions relating to cleanup and future use of a brownfield site.

`(x) The extent to which a grant would address or facilitate the identification and reduction of threats to the health or welfare of children, pregnant women, minority or low-income communities, or other sensitive populations.

`(6) IMPLEMENTATION OF BROWNFIELDS PROGRAMS-

`(A) ESTABLISHMENT OF PROGRAM- The Administrator may provide, or fund eligible entities or nonprofit organizations to provide, training, research, and technical assistance to individuals and organizations, as appropriate, to facilitate the inventory of brownfield sites, site assessments, remediation of brownfield sites, community involvement, or site preparation.

`(B) FUNDING RESTRICTIONS- The total Federal funds to be expended by the Administrator under this paragraph shall not exceed 15 percent of the total amount appropriated to carry out this subsection in any fiscal year.

`(7) AUDITS-

`(A) IN GENERAL- The Inspector General of the Environmental Protection Agency shall conduct such reviews or audits of grants and loans under this subsection as the Inspector General considers necessary to carry out this subsection.

`(B) PROCEDURE- An audit under this subparagraph shall be conducted in accordance with the auditing procedures of the General Accounting Office, including chapter 75 of title 31, United States Code.

`(C) VIOLATIONS- If the Administrator determines that a person that receives a grant or loan under this subsection has violated or is in violation of a condition of the grant, loan, or applicable Federal law, the Administrator may--

`(i) terminate the grant or loan;

`(ii) require the person to repay any funds received; and

`(iii) seek any other legal remedies available to the Administrator.

`(D) REPORT TO CONGRESS- Not later than 3 years after the date of the enactment of this subsection, the Inspector General of the Environmental Protection Agency shall submit to Congress a report that provides a description of the management of the program (including a description of the allocation of funds under this subsection).

`(8) LEVERAGING- An eligible entity that receives a grant under this subsection may use the grant funds for a portion of a project at a brownfield site for which funding is received from other sources if the grant funds are used only for the purposes described in paragraph (2) or (3).

`(9) AGREEMENTS- Each grant or loan made under this subsection shall--

`(A) include a requirement of the National Contingency Plan only to the extent that the requirement is relevant and appropriate to the program under this subsection, as determined by the Administrator; and

`(B) be subject to an agreement that--

`(i) requires the recipient to--

`(I) comply with all applicable Federal and State laws; and

`(II) ensure that the cleanup protects human health and the environment;

`(ii) requires that the recipient use the grant or loan exclusively for purposes specified in paragraph (2) or (3), as applicable;

`(iii) in the case of an application by an eligible entity under paragraph (3)(A), requires the eligible entity to pay a matching share (which may be in the form of a contribution of labor, material, or services) of at least 20 percent, from non-Federal sources of funding, unless the Administrator determines that the matching share would place an undue hardship on the eligible entity; and

`(iv) contains such other terms and conditions as the Administrator determines to be necessary to carry out this subsection.

`(10) FACILITY OTHER THAN BROWNFIELD SITE- The fact that a facility may not be a brownfield site within the meaning of section 101(39)(A) has no effect on the eligibility of the facility for assistance under any other provision of Federal law.

`(11) EFFECT ON FEDERAL LAWS- Nothing in this subsection affects any liability or response authority under any Federal law, including--

`(A) this Act (including the last sentence of section 101(14));

`(B) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

`(C) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

`(D) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

`(E) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

`(12) FUNDING-

`(A) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to carry out this subsection $200,000,000 for each of fiscal years 2002 through 2006.

`(B) USE OF CERTAIN FUNDS- Of the amount made available under subparagraph (A), $50,000,000, or, if the amount made available is less than $200,000,000, 25 percent of the amount made available, shall be used for site characterization, assessment, and remediation of facilities described in section 101(39)(D)(ii)(II).'.

Subtitle B--Brownfields Liability Clarifications

SEC. 221. CONTIGUOUS PROPERTIES.

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) is amended by adding at the end the following:

`(q) CONTIGUOUS PROPERTIES-

`(1) NOT CONSIDERED TO BE AN OWNER OR OPERATOR-

`(A) IN GENERAL- A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from, real property that is not owned by that person shall not be considered to be an owner or operator of a vessel or facility under paragraph (1) or (2) of subsection (a) solely by reason of the contamination if--

`(i) the person did not cause, contribute, or consent to the release or threatened release;

`(ii) the person is not--

`(I) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through any direct or indirect familial relationship or any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by a contract for the sale of goods or services); or

`(II) the result of a reorganization of a business entity that was potentially liable;

`(iii) the person takes reasonable steps to--

`(I) stop any continuing release;

`(II) prevent any threatened future release; and

`(III) prevent or limit human, environmental, or natural resource exposure to any hazardous substance released on or from property owned by that person;

`(iv) the person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the vessel or facility from which there has been a release or threatened release (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action or natural resource restoration at the vessel or facility);

`(v) the person--

`(I) is in compliance with any land use restrictions established or relied on in connection with the response action at the facility; and

`(II) does not impede the effectiveness or integrity of any institutional control employed in connection with a response action;

`(vi) the person is in compliance with any request for information or administrative subpoena issued by the President under this Act;

`(vii) the person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility; and

`(viii) at the time at which the person acquired the property, the person--

`(I) conducted all appropriate inquiry within the meaning of section 101(35)(B) with respect to the property; and

`(II) did not know or have reason to know that the property was or could be contaminated by a release or threatened release of one or more hazardous substances from other real property not owned or operated by the person.

`(B) DEMONSTRATION- To qualify as a person described in subparagraph (A), a person must establish by a preponderance of the evidence that the conditions in clauses (i) through (viii) of subparagraph (A) have been met.

`(C) BONA FIDE PROSPECTIVE PURCHASER- Any person that does not qualify as a person described in this paragraph because the person had, or had reason to have, knowledge specified in subparagraph (A)(viii) at the time of

acquisition of the real property may qualify as a bona fide prospective purchaser under section 101(40) if the person is otherwise described in that section.

`(D) GROUND WATER- With respect to a hazardous substance from one or more sources that are not on the property of a person that is a contiguous property owner that enters ground water beneath the property of the person solely as a result of subsurface migration in an aquifer, subparagraph (A)(iii) shall not require the person to conduct ground water investigations or to install ground water remediation systems, except in accordance with the policy of the Environmental Protection Agency concerning owners of property containing contaminated aquifers, dated May 24, 1995.

`(2) EFFECT OF LAW- With respect to a person described in this subsection, nothing in this subsection--

`(A) limits any defense to liability that may be available to the person under any other provision of law; or

`(B) imposes liability on the person that is not otherwise imposed by subsection (a).

`(3) ASSURANCES- The Administrator may--

`(A) issue an assurance that no enforcement action under this Act will be initiated against a person described in paragraph (1); and

`(B) grant a person described in paragraph (1) protection against a cost recovery or contribution action under section 113(f).'.

SEC. 222. PROSPECTIVE PURCHASERS AND WINDFALL LIENS.

(a) DEFINITION OF BONA FIDE PROSPECTIVE PURCHASER- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by section 211(a) of this Act) is amended by adding at the end the following:

`(40) BONA FIDE PROSPECTIVE PURCHASER- The term `bona fide prospective purchaser' means a person (or a tenant of a person) that acquires ownership of a facility after the date of the enactment of this paragraph and that establishes each of the following by a preponderance of the evidence:

`(A) DISPOSAL PRIOR TO ACQUISITION- All disposal of hazardous substances at the facility occurred before the person acquired the facility.

`(B) INQUIRIES-

`(i) IN GENERAL- The person made all appropriate inquiries into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices in accordance with clauses (ii) and (iii).

`(ii) STANDARDS AND PRACTICES- The standards and practices referred to in clauses (ii) and (iv) of paragraph (35)(B) shall be considered to satisfy the requirements of this subparagraph.

`(iii) RESIDENTIAL USE- In the case of property in residential or other similar use at the time of purchase by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.

`(C) NOTICES- The person provides all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

`(D) CARE- The person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to--

`(i) stop any continuing release;

`(ii) prevent any threatened future release; and

`(iii) prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance.

`(E) COOPERATION, ASSISTANCE, AND ACCESS- The person provides full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at a vessel or facility (including the cooperation and access necessary for the installation, integrity, operation,

and maintenance of any complete or partial response actions or natural resource restoration at the vessel or facility).

`(F) INSTITUTIONAL CONTROL- The person--

`(i) is in compliance with any land use restrictions established or relied on in connection with the response action at a vessel or facility; and

`(ii) does not impede the effectiveness or integrity of any institutional control employed at the vessel or facility in connection with a response action.

`(G) REQUESTS; SUBPOENAS- The person complies with any request for information or administrative subpoena issued by the President under this Act.

`(H) NO AFFILIATION- The person is not--

`(i) potentially liable, or affiliated with any other person that is potentially liable, for response costs at a facility through--

`(I) any direct or indirect familial relationship; or

`(II) any contractual, corporate, or financial relationship (other than a contractual, corporate, or financial relationship that is created by the instruments by which title to the facility is conveyed or financed or by a contract for the sale of goods or services); or

`(ii) the result of a reorganization of a business entity that was potentially liable.'.

(b) PROSPECTIVE PURCHASER AND WINDFALL LIEN- Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607) (as amended by this Act) is further amended by adding at the end the following:

`(r) PROSPECTIVE PURCHASER AND WINDFALL LIEN-

`(1) LIMITATION ON LIABILITY- Notwithstanding subsection (a)(1), a bona fide prospective purchaser whose potential liability for a release or threatened release is based solely on the purchaser's being considered to be an owner or operator of a facility shall not be liable as long as the bona fide prospective purchaser does not impede the performance of a response action or natural resource restoration.

`(2) LIEN- If there are unrecovered response costs incurred by the United States at a facility for which an owner of the facility is not liable by reason of paragraph (1), and if each of the conditions described in paragraph (3) is met, the United States shall have a lien on the facility, or may by agreement with the owner, obtain from the owner a lien on any other property or other assurance of payment satisfactory to the Administrator, for the unrecovered response costs.

`(3) CONDITIONS- The conditions referred to in paragraph (2) are the following:

`(A) RESPONSE ACTION- A response action for which there are unrecovered costs of the United States is carried out at the facility.

`(B) FAIR MARKET VALUE- The response action increases the fair market value of the facility above the fair market value of the facility that existed before the response action was initiated.

`(4) AMOUNT; DURATION- A lien under paragraph (2)--

`(A) shall be in an amount not to exceed the increase in fair market value of the property attributable to the response action at the time of a sale or other disposition of the property;

`(B) shall arise at the time at which costs are first incurred by the United States with respect to a response action at the facility;

`(C) shall be subject to the requirements of subsection (l)(3); and

`(D) shall continue until the earlier of--

`(i) satisfaction of the lien by sale or other means; or

`(ii) notwithstanding any statute of limitations under section 113, recovery of all response costs incurred at the facility.'.

SEC. 223. INNOCENT LANDOWNERS.

Section 101(35) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601(35)) is amended--

(1) in subparagraph (A)--

(A) in the first sentence, in the matter preceding clause (i), by striking `deeds or' and inserting `deeds, easements, leases, or'; and

(B) in the second sentence--

(i) by striking `he' and inserting `the defendant'; and

(ii) by striking the period at the end and inserting `, provides full cooperation, assistance, and facility access to the persons that are authorized to conduct response actions at the facility (including the cooperation and access necessary for the installation, integrity, operation, and maintenance of any complete or partial response action at the facility), is in compliance with any land use restrictions established or relied on in connection with the response action at a facility, and does not impede the effectiveness or integrity of any institutional control employed at the facility in connection with a response action.'; and

(2) by striking subparagraph (B) and inserting the following:

`(B) REASON TO KNOW-

`(i) ALL APPROPRIATE INQUIRIES- To establish that the defendant had no reason to know of the matter described in subparagraph (A)(i), the defendant must demonstrate to a court that--

`(I) on or before the date on which the defendant acquired the facility, the defendant carried out all appropriate inquiries, as provided in clauses (ii) and (iv), into the previous ownership and uses of the facility in accordance with generally accepted good commercial and customary standards and practices; and

`(II) the defendant took reasonable steps to--

`(aa) stop any continuing release;

`(bb) prevent any threatened future release; and

`(cc) prevent or limit any human, environmental, or natural resource exposure to any previously released hazardous substance.

`(ii) STANDARDS AND PRACTICES- Not later than 2 years after the date of the enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, the Administrator shall by regulation establish standards and practices for the purpose of satisfying the requirement to carry out all appropriate inquiries under clause (i).

`(iii) CRITERIA- In promulgating regulations that establish the standards and practices referred to in clause (ii), the Administrator shall include each of the following:

`(I) The results of an inquiry by an environmental professional.

`(II) Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.

`(III) Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land use records, to determine previous uses and occupancies of the real property since the property was first developed.

`(IV) Searches for recorded environmental cleanup liens against the facility that are filed under Federal, State, or local law.

`(V) Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records, concerning contamination at or near the facility.

`(VI) Visual inspections of the facility and of adjoining properties.

`(VII) Specialized knowledge or experience on the part of the defendant.

`(VIII) The relationship of the purchase price to the value of the property, if the property was not contaminated.

`(IX) Commonly known or reasonably ascertainable information about the property.

`(X) The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

`(iv) INTERIM STANDARDS AND PRACTICES-

`(I) PROPERTY PURCHASED BEFORE MAY 31, 1997- With respect to property purchased before May 31, 1997, in making a determination with respect to a defendant described in clause (i), a court shall take into account--

`(aa) any specialized knowledge or experience on the part of the defendant;

`(bb) the relationship of the purchase price to the value of the property, if the property was not contaminated;

`(cc) commonly known or reasonably ascertainable information about the property;

`(dd) the obviousness of the presence or likely presence of contamination at the property; and

`(ee) the ability of the defendant to detect the contamination by appropriate inspection.

`(II) PROPERTY PURCHASED ON OR AFTER MAY 31, 1997- With respect to property purchased on or after May 31, 1997, and until the Administrator promulgates the regulations described in clause (ii), the procedures of the American Society for Testing and Materials, including the document known as `Standard E1527-97', entitled `Standard Practice for Environmental Site Assessment: Phase 1 Environmental Site Assessment Process', shall satisfy the requirements in clause (i).

`(v) SITE INSPECTION AND TITLE SEARCH- In the case of property for residential use or other similar use purchased by a nongovernmental or noncommercial entity, a facility inspection and title search that reveal no basis for further investigation shall be considered to satisfy the requirements of this subparagraph.'.

Subtitle C--State Response Programs

SEC. 231. STATE RESPONSE PROGRAMS.

(a) DEFINITIONS- Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601) (as amended by this Act) is further amended by adding at the end the following:

`(41) ELIGIBLE RESPONSE SITE-

`(A) IN GENERAL- The term `eligible response site' means a site that meets the definition of a brownfield site in subparagraphs (A) and (B) of paragraph (39), as modified by subparagraphs (B) and (C) of this paragraph.

`(B) INCLUSIONS- The term `eligible response site' includes--

`(i) notwithstanding paragraph (39)(B)(ix), a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established under section 9508 of the Internal Revenue Code of 1986; or

`(ii) a site for which, notwithstanding the exclusions provided in subparagraph (C) or paragraph (39)(B), the President determines, on a site-by-site basis and after consultation with the State, that limitations on enforcement under section 128 at sites specified in clause (iv), (v), (vi) or (viii) of paragraph (39)(B) would be appropriate and will--

`(I) protect human health and the environment; and

`(II) promote economic development or facilitate the creation of, preservation of, or addition to a park, a greenway, undeveloped

property, recreational property, or other property used for nonprofit purposes.

`(C) EXCLUSIONS- The term `eligible response site' does not include--

`(i) a facility for which the President--

`(I) conducts or has conducted a preliminary assessment or site inspection; and

`(II) after consultation with the State, determines or has determined that the site obtains a preliminary score sufficient for possible listing on the National Priorities List, or that the site otherwise qualifies for listing on the National Priorities List; unless the President has made a determination that no further Federal action will be taken; or

`(ii) facilities that the President determines warrant particular consideration as identified by regulation, such as sites posing a threat to a sole-source drinking water aquifer or a sensitive ecosystem.'.

(b) STATE RESPONSE PROGRAMS- Title I of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) is amended by adding at the end the following:

`SEC. 128. STATE RESPONSE PROGRAMS.

`(a) ASSISTANCE TO STATES-

`(1) IN GENERAL-

`(A) STATES- The Administrator may award a grant to a State or Indian tribe that--

`(i) has a response program that includes each of the elements, or is taking reasonable steps to include each of the elements, listed in paragraph (2); or

`(ii) is a party to a memorandum of agreement with the Administrator for voluntary response programs.

`(B) USE OF GRANTS BY STATES-

`(i) IN GENERAL- A State or Indian tribe may use a grant under this subsection to establish or enhance the response program of the State or Indian tribe.

`(ii) ADDITIONAL USES- In addition to the uses under clause (i), a State or Indian tribe may use a grant under this subsection to--

`(I) capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or

`(II) purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State response program.

`(2) ELEMENTS- The elements of a State or Indian tribe response program referred to in paragraph (1)(A)(i) are the following:

`(A) Timely survey and inventory of brownfield sites in the State.

`(B) Oversight and enforcement authorities or other mechanisms, and resources, that are adequate to ensure that--

`(i) a response action will--

`(I) protect human health and the environment; and

`(II) be conducted in accordance with applicable Federal and State law; and

`(ii) if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed.

`(C) Mechanisms and resources to provide meaningful opportunities for public participation, including--

`(i) public access to documents that the State, Indian tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

`(ii) prior notice and opportunity for comment on proposed cleanup plans and site activities; and

`(iii) a mechanism by which--

`(I) a person that is or may be affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfield site located in the community in which the person works or resides may request the conduct of a site assessment; and

`(II) an appropriate State official shall consider and appropriately respond to a request under subclause (I).

`(D) Mechanisms for approval of a cleanup plan, and a requirement for verification by and certification or similar documentation from the State, an Indian tribe, or a licensed site professional to the person conducting a response action indicating that the response is complete.

`(3) FUNDING- There is authorized to be appropriated to carry out this subsection $50,000,000 for each of fiscal years 2002 through 2006.

`(b) ENFORCEMENT IN CASES OF A RELEASE SUBJECT TO STATE PROGRAM-

`(1) ENFORCEMENT-

`(A) IN GENERAL- Except as provided in subparagraph (B) and subject to subparagraph (C), in the case of an eligible response site at which--

`(i) there is a release or threatened release of a hazardous substance, pollutant, or contaminant; and

`(ii) a person is conducting or has completed a response action regarding the specific release that is addressed by the response action that is in compliance with the State program that specifically governs response actions for the protection of public health and the environment,

the President may not use authority under this Act to take an administrative or judicial enforcement action under section 106(a) or to take a judicial enforcement action to recover response costs under section 107(a) against the person regarding the specific release that is addressed by the response action.

`(B) EXCEPTIONS- The President may bring an administrative or judicial enforcement action under this Act during or after completion of a response action described in subparagraph (A) with respect to a release or threatened release at an eligible response site described in that subparagraph if--

`(i) the State requests that the President provide assistance in the performance of a response action;

`(ii) the Administrator determines that contamination has migrated or will migrate across a State line, resulting in the need for further response action to protect human health or the environment, or the President determines that contamination has migrated or is likely to migrate onto property subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States and may impact the authorized purposes of the Federal property;

`(iii) after taking into consideration the response activities already taken, the Administrator determines that--

`(I) a release or threatened release may present an imminent and substantial endangerment to public health or welfare or the environment; and

`(II) additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release; or

`(iv) the Administrator, after consultation with the State, determines that information, that on the earlier of the date on which cleanup was

approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the cleanup, has been discovered regarding the contamination or conditions at a facility such that the contamination or conditions at the facility present a threat requiring further remediation to protect public health or welfare or the environment. Consultation with the State shall not limit the ability of the Administrator to make this determination.

`(C) PUBLIC RECORD- The limitations on the authority of the President under subparagraph (A) apply only at sites in States that maintain, update not less than annually, and make available to the public a record of sites, by name and location, at which response actions have been completed in the previous year and are planned to be addressed under the State program that specifically governs response actions for the protection of public health and the environment in the upcoming year. The public record shall identify whether or not the site, on completion of the response action, will be suitable for unrestricted use and, if not, shall identify the institutional controls relied on in the remedy. Each State and tribe receiving financial assistance under subsection (a) shall maintain and make available to the public a record of sites as provided in this paragraph.

`(D) EPA NOTIFICATION-

`(i) IN GENERAL- In the case of an eligible response site at which there is a release or threatened release of a hazardous substance, pollutant, or contaminant and for which the Administrator intends to carry out an action that may be barred under subparagraph (A), the Administrator shall--

`(I) notify the State of the action the Administrator intends to take; and

`(II)(aa) wait 48 hours for a reply from the State under clause (ii); or

`(bb) if the State fails to reply to the notification or if the Administrator makes a determination under clause (iii), take immediate action under that clause.

`(ii) STATE REPLY- Not later than 48 hours after a State receives notice from the Administrator under clause (i), the State shall notify the Administrator if--

`(I) the release at the eligible response site is or has been subject to a cleanup conducted under a State program; and

`(II) the State is planning to abate the release or threatened release, any actions that are planned.

`(iii) IMMEDIATE FEDERAL ACTION- The Administrator may take action immediately after giving notification under clause (i) without waiting for a State reply under clause (ii) if the Administrator determines that one or more exceptions under subparagraph (B) are met.

`(E) REPORT TO CONGRESS- Not later than 90 days after the date of initiation of any enforcement action by the President under clause (ii), (iii), or (iv) of subparagraph (B), the President shall submit to Congress a report describing the basis for the enforcement action, including specific references to the facts demonstrating that enforcement action is permitted under subparagraph (B).

`(2) SAVINGS PROVISION-

`(A) COSTS INCURRED PRIOR TO LIMITATIONS- Nothing in paragraph (1) precludes the President from seeking to recover costs incurred prior to the date of the enactment of this section or during a period in which the limitations of paragraph (1)(A) were not applicable.

`(B) EFFECT ON AGREEMENTS BETWEEN STATES AND EPA- Nothing in paragraph (1)--

`(i) modifies or otherwise affects a memorandum of agreement, memorandum of understanding, or any similar agreement relating to this

Act between a State agency or an Indian tribe and the Administrator that is in effect on or before the date of the enactment of this section (which agreement shall remain in effect, subject to the terms of the agreement); or

`(ii) limits the discretionary authority of the President to enter into or modify an agreement with a State, an Indian tribe, or any other person relating to the implementation by the President of statutory authorities.

`(3) EFFECTIVE DATE- This subsection applies only to response actions conducted after February 15, 2001.

`(c) EFFECT ON FEDERAL LAWS- Nothing in this section affects any liability or response authority under any Federal law, including--

`(1) this Act, except as provided in subsection (b);

`(2) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

`(3) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

`(4) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

`(5) the Safe Drinking Water Act (42 U.S.C. 300f et seq.).'.

SEC. 232. ADDITIONS TO NATIONAL PRIORITIES LIST.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9605) is amended by adding at the end the following:

`(h) NPL DEFERRAL-

`(1) DEFERRAL TO STATE VOLUNTARY CLEANUPS- At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that--

`(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site--

`(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

`(ii) that will provide long-term protection of human health and the environment; or

`(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A).

`(2) PROGRESS TOWARD CLEANUP- If, after the last day of the 1-year period beginning on the date on which the President proposes to list an eligible response site on the National Priorities List, the President determines that the State or other party is not making reasonable progress toward completing a response action at the eligible response site, the President may list the eligible response site on the National Priorities List.

`(3) CLEANUP AGREEMENTS- With respect to an eligible response site under paragraph (1)(B), if, after the last day of the 1-year period beginning on the date on which the President proposes to list the eligible response site on the National Priorities List, an agreement described in paragraph (1)(B) has not been reached, the President may defer the listing of the eligible response site on the National Priorities List for an additional period of not to exceed 180 days if the President determines deferring the listing would be appropriate based on--

`(A) the complexity of the site;

`(B) substantial progress made in negotiations; and

`(C) other appropriate factors, as determined by the President.

`(4) EXCEPTIONS- The President may decline to defer, or elect to discontinue a deferral of, a listing of an eligible response site on the National Priorities List if the President determines that--

`(A) deferral would not be appropriate because the State, as an owner or operator or a significant contributor of hazardous substances to the facility, is a potentially responsible party;

`(B) the criteria under the National Contingency Plan for issuance of a health advisory have been met; or

`(C) the conditions in paragraphs (1) through (3), as applicable, are no longer being met.'.

Speaker of the House of Representatives.

Vice President of the United States and

President of the Senate.

END

Appendix E: Federal Brownfield Site Redevelopment Assistance Act of 2002

BROWNFIELD SITE REDEVELOPMENT ASSISTANCE ACT OF 2002

_____

August 28, 2002.--Ordered to be printed

Filed, under authority of the order of the Senate of July 29, 2002.

_____

Mr. Jeffords, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[to accompany S. 1079]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 1079) to amend the Public Works and Economic Development Act of 1965, to provide assistance to communities for the redevelopment of brownfield sites, having considered the same reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

General Statement and Background

The Brownfield Site Redevelopment Assistance Act, S. 1079, will provide the Department of Commerce's Economic Development Administration (EDA) with the legislative authority to engage in brownfields redevelopment activities. Currently, EDA funding can be used for brownfields redevelopment only when a public works or economic adjustment project receiving funding is located on a brownfield site. For example, if a city receives a grant to upgrade water and sewer facilities and the facilities are located on a brownfield, only then can the agency use funding for redevelopment. This legislation changes current law by allowing EDA to undertake individual brownfields redevelopment projects. S. 1079 also provides EDA with a dedicated source of funding ($60 million a year for 5 years) to help States, local communities, Indian tribes and nonprofit organizations restore brownfield sites to productive use. This legislation complements the resources and liability clarifications provided in the Brownfields Revitalization and Environmental Restoration Act, S. 350, by focusing on the step after assessment and cleanup: actual redevelopment.

The economic and social need for redeveloping brownfields sites has been well-documented. While predominantly affecting urban areas, brownfields also impact rural areas and Native

American communities. The committee notes the following:

1. The U.S. Conference of Mayors (USCM) estimates that brownfields redevelopment could generate more than 550,000 additional jobs and up to $2.4 billion in new tax revenues for cities. The cities surveyed by the USCM reported that lack of funding for redevelopment is a major obstacle to reuse (Recycling America's Land: A National Report on Brownfields Redevelopment, February 24, 2000, US Conference of Mayors survey results from 231 cities).
2. The General Accounting Office has estimated that there are up to 450,000 brownfields sites. Independent researchers have estimated that there may be as many as 600,000 brownfields sites (Simons, Turning Brownfields into Greenbacks, 1998); and the Bush Administration has publicly stated that there may be as many as 1 million brownfields.
3. In rural areas, abundant open space often is preferred over brownfield sites. The National Association of Development Organizations (NADO) in a report on reclaiming rural America's brownfields found that Federal agencies are not reaching rural areas through existing brownfields programs, and rural communities need financial and technical assistance to include brownfields in economic development strategies.
4. Tribal lands face a legacy of former agricultural, industrial and commercial facilities that have real or perceived contamination. EPA estimates that nationwide there are 1,645 facilities located on tribal lands and 6,982 facilities located within three miles of tribal lands. Currently, 18 tribes have received grants from EPA for brownfields redevelopment.

Public investment combined with private financing can provide incentives for redeveloping these former industrial and commercial properties and level the economic playing field between greenfields and brownfields.

The EDA has provided grants for Eco-Industrial Development (EID) projects including a EID center at Cornell University which promoted these approaches nationwide. EID involves businesses voluntarily coming together to conserve resources, increase efficiencies and reduce wastes.

Objectives of the Legislation

The Brownfield Site Redevelopment Assistance Act, S. 1079, will expand the Department of Commerce's Economic Development Administration (EDA) efforts to assist communities with economic development by authorizing a program to provide targeted assistance for projects that redevelop brownfield sites and authorizing EDA to offer assistance to projects that promote Eco-Industry Development. The bill will provide EDA with increased funding flexibility to help States, local communities, Indian tribes and nonprofit organizations restore these sites to productive use. The bill authorizes $60 million each year for 5 years for brownfields redevelopment, and gives EDA the authority to provide grants for brownfields redevelopment projects, including:

<bullet> Development of public facilities
<bullet> Business development (including revolving loan funds)
<bullet> Technical assistance and Training
<bullet> Activities to help communities diversify their economies and encourage infill development
<bullet> Collaborative economic development planning

While EDA assistance has helped communities redevelop brownfields, the agency lacks a specific authority and a dedicated source of funding for brownfields. This bill would provide EDA with the authority to facilitate effective economic development planning for reuse; develop infrastructure necessary to prepare sites for re-entry into the market; and, provide the capital necessary to support new business development. This bill would make reuse of brownfield sites a priority for EDA.

Section-by-Section Analysis

Section 1. Short Title
Brownfield Site Redevelopment Assistance Act of 2001.
Sec. 2. Purposes
To provide targeted assistance through the Department of Commerce's Economic Development Administration for projects that promote the redevelopment and economic recovery of brownfield sites and the use of eco-industrial development approaches in order to bring new income and private investment to distressed communities.
Sec. 3. Definitions
This legislation defines ``brownfields'' as real property upon which the Secretary of Commerce, in consultation with the Administrator of the Environmental Protection Agency, determines there is a presence or potential presence of a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation and Liability Act) or any other pollutant or contaminant. The committee intends that the Secretary, through EDA, continue to fund economic redevelopment of brownfields sites contaminated by pollutants such as asbestos, lead, and petroleum products. However, the committee recognizes the EPA's primary role within the Federal Government in protection of the environment, as well as remediation, and does not intend that the EDA will make remediation decisions. When an eligible applicant seeks funding for assessment or cleanup of a brownfields site under section 3(1)(C), the committee expects that the Secretary will obtain approval for funding for the site from the EPA. This is also true for sites covered under section 3(1)(D)(II).
This legislation defines ``Eco-Industrial Development (EID)'' as development conducted in a manner in which businesses cooperate with each other and local community to efficiently share resources (such as information, materials, water, energy infrastructure and natural habitat) with the goals of economic gains, improved environmental quality and equitable enhancement of human resources in businesses and

local communities.

Sec. 4. Coordination

Recommends that the Secretary of Commerce coordinate brownfields redevelopment activities with other Federal agencies, States, local governments, consortia of local governments, Indian tribes, nonprofit organizations and public-private partnerships.

Sec. 5. Grants for Brownfield Site Redevelopment

Makes grants available through EDA for brownfields projects that alleviate excessive unemployment, underemployment, blight and infrastructure deterioration. Projects include: development of public facilities, development of public services, business development, planning, technical assistance and training. Grants may also be made available for activities identified by a community negatively impacted by brownfields. These activities include: diversifying the economy; carrying out industrial or commercial redevelopment projects and eco-industrial projects; promoting smart growth through infill development that conserves environmental and agricultural resources; and carrying out collaborative economic development planning.

Sec. 6. Authorization of Appropriations

Authorizes $60 million for each fiscal years 2002 through 2006.

Legislative History

S. 1079 was introduced by Senator Carl Levin on June 21, 2001. A legislative hearing was held on March 6, 2002. On April 25, 2002, the Committee on Environment and Public Works met to consider S. 1079. An amendment in the nature of a substitute, offered by Senators Jeffords and Smith, was agreed by voice vote; and the bill, as amended, was ordered reported by voice vote.

Hearings

On March 6, 2002, the full committee held a legislative hearing on S. 1079. Testimony was provided by Senator Carl Levin of Michigan; Hon. David A. Sampson, Assistant Secretary of Commerce for Economic Development; Ms. Elizabeth Humstone, Vermont Forum on Sprawl, Burlington, on behalf of the American Planning Association; Ms. Deborah Anderson, Wood Partners, Durham, NC, on behalf of the National Multi-Housing Council/ National Apartment Association; Mr. Don Chen, Smart Growth America, Washington, DC; Mr. F. Gary Garczynski, Woodbridge, VA, on behalf of the National Association of Home Builders; and Ms. Mary Lou Bentley, Western Nevada Development District, Carson City, on behalf National Association of Development Organizations.

Regulatory Impact Statement

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee makes evaluation of the regulatory impact of the reported bill.

S. 1079 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

Mandates Assessment

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee finds that S. 1079 would not impose any Federal intergovernmental unfunded mandates on State, local, or tribal governments.

Cost of Legislation

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. Congress,
Congressional Budget Office,
Washington, DC, May 13, 2002.

Hon. James M. Jeffords, Chairman,
Committee on Environment and Public Works,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1079, the Brownfields Site Redevelopment Assistance Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for Federal costs), who can be reached at 226-2860, and Leo Lex (for State and local impact), who can be reached at 225-3220.

Sincerely,

Dan L. Crippen.

S. 1079, Brownfields Site Redevelopment Assistance Act of 2002, As ordered reported by the Senate Committee on Environment and Public Works on April 25, 2002

Summary

S. 1079 would authorize the Economic Development Administration (EDA) to make grants to communities or tribes for projects that promote the development of brownfield sites. (Brownfields are properties where the presence, or potential presence, of a hazardous substance complicates the development of the property.) The new grants would be used to develop public facilities and business or for planning, technical assistance and training. For these purposes, the bill would authorize the appropriation of $60 million annually for fiscal years 2003 through 2007.

CBO estimates that implementing S. 1079 would cost $130 million through fiscal year 2007, assuming the appropriation of the authorized amounts. We estimate that the remaining $170 million authorized by the bill would be spent after 2007. S.

1079 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would benefit local governments by authorizing $60 million annually in grants to alleviate blight and deterioration associated with brownfield sites. Communities receiving assistance would have to provide at least 25 percent in matching funds for any grants they receive.

Estimated Cost to the Federal Government

The estimated budgetary impact of S. 1079 is shown in the following table. The costs of this legislation fall within budget function 450 (community and regional development). For this estimate, CBO assumes that the bill will be enacted before the start of fiscal year 2003, and that authorized amounts will be appropriated for each fiscal year. Outlays have been estimated based on historical spending patterns of similar programs.

By Fiscal Year, in Millions of Dollars

	2003	2004	2005	2006	2007
SPENDING SUBJECT TO APPROPRIATION					
EDA Brownfields Grants\1\:					
Authorization Level.....	60	60	60	60	60
Estimated Outlays.....	2	10	25	40	53

\1\For 2002, $335 million was appropriated for the various developmental assistance programs administered by EDA. Brownfields grants would be a new EDA program.

Pay-As-You-Go Considerations: None.

Intergovernmental and Private-Sector Impact

S. 1079 contains no intergovernmental mandates as defined in UMRA and would benefit local governments by authorizing $60 million annually in grants to alleviate blight and deterioration associated with brownfield sites. Communities receiving assistance would have to provide at least 25 percent in matching funds for any grants they receive.

Estimate Prepared By: Federal Costs: Deborah Reis; Impact on State, Local, and Tribal Governments: Leo Lex; Impact on the Private Sector: Lauren Marks.

Estimate Approved By: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

Changes in Existing Law

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as reported are shown as follows: Existing law proposed to be omitted is enclosed in [black brackets], new matter is printed in italic, existing law in which no change is proposed is shown in roman:

PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965

[As Amended Through P.L. 106-580, Dec. 29, 2000]

AN ACT To provide grants for public works and development facilities, other financial assistance and the planning and coordiation needed to alleviate conditions of substantial and persistent unemployment and underemployment in economically distressed areas and regions.

* * * * * * *

* * * * * * *

SEC. 3. DEFINITIONS.

In this Act:

(1) Brownfield site.--

(A) In general.--The term ``brownfield site'' means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of--

(i) a hazardous substance (as defined in section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601)); or

(ii) any other pollutant or contaminant, as determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency.

(B) Exclusions.--Except as provided in subparagraph (C), the term ``brownfield site'' does not include--

(i) a facility that is the subject

of a planned or ongoing removal action under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(ii) a facility that is listed on the National Priorities List, or is proposed for listing on that list, under that Act;

(iii) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent, or a judicial consent decree that has been issued to or entered into by the parties under that Act;

(iv) a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent, or a judicial consent decree that has been issued to or entered into by the parties, or a facility to which a permit has been issued by the United States or an authorized State, under--

(I) the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(II) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(III) the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(IV) the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(v) a facility--

(I) that is subject to corrective action under section 3004(u) or 3008(h) of the Solid Waste Disposal Act (42 U.S.C. 6924(u), 6928(h)); and

(II) to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;

(vi) a land disposal unit with respect to which--

(I) a closure notification under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.) has been submitted; and

(II) closure requirements have been specified in a closure plan or permit;

(vii) a facility that is subject to the jurisdiction, custody, or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe;

(viii) a portion of a facility--

(I) at which there has been a release of polychlorinated biphenyls; and

(II) that is subject to remediation under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); or

(ix) a portion of a facility, for which portion assistance for response activity has been obtained under subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) from the Leaking Underground Storage Tank Trust Fund established by section 9508 of the Internal Revenue Code of 1986.

(C) Site-by-site inclusions.--The term ``brownfield site'' includes a site referred to in clause (i), (iv), (v), (vi), (viii), or (ix) of subparagraph (B), if, on a site-by-site basis, the Secretary, in consultation with the Administrator of the Environmental Protection Agency, determines that use of financial assistance at the site will--

(i) protect human health and the environment; and

(ii)(I) promote economic development;

(II) enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes; or

(III) promote eco-industrial development.

(D) Additional inclusions.--The term ``brownfield site'' includes a site that meets the definition of ``brownfield site'' under subparagraphs (A) through (C) and that--

(i) is contaminated by a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802));

(ii)(I) is contaminated by petroleum or a petroleum product excluded from the definition of ``hazardous substance'' under section 101 of the Comprehensive Environmental Response, Compensation, and Liability

Act of 1980 (42 U.S.C. 9601);

(II) is a site determined by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, to be--

(aa) of relatively low risk, as compared with other petroleum-only sites in the State in which the site is located; and

(bb) a site for which there is no viable responsible party and that will be assessed, investigated, or cleaned up by a person that is not potentially liable for cleaning up the site; and

(III) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 U.S.C. 6991b(h)); or

(iii) is mine-scarred land.

[(1)] (2) Comprehensive economic development strategy.--The term ``comprehensive economic development strategy'' means a comprehensive economic development strategy approved by the Secretary under section 302.

[(2)] (3) Department.--The term ``Department'' means the Department of Commerce.

(4) Eco-industrial development.--The term ``eco-industrial development'' means development conducted in a manner in which businesses cooperate with each other and the local community to efficiently share resources (such as information, materials, water, energy infrastructure, and natural habitat) with the goals of--

(A) economic gains;

(B) improved environmental quality; and

(C) equitable enhancement of human resources in businesses and local communities.

[(3)] (5) Economic development district.--

(A) In general.--The term ``economic development district'' means any area in the United States that--

(i) is composed of areas described in section 301(a) and, to the extent appropriate, neighboring counties or communities; and

(ii) has been designated by the Secretary as an economic development district under section 401.

(B) Inclusion.--The term ``economic development district'' includes any economic development district designated by the Secretary under section 403 (as in effect on the day before the effective date of the

Economic Development Administration Reform Act of 1998).

[(4)] (6) Eligible recipient.--

(A) In general.--The term ``eligible recipient'' means--

(i) an area described in section 301(a);

(ii) an economic development district;

(iii) an Indian tribe;

(iv) a State;

(v) a city or other political subdivision of a State or a consortium of political subdivisions;

(vi) an institution of higher education or a consortium of institutions of higher education; or

(vii) a public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(B) Training, research, and technical assistance grants.--In the case of grants under section 207, the term ``eligible recipient'' also includes private individuals and for-profit organizations.

[(5)] (7) Federal agency.--The term ``Federal agency'' means a department, agency, or instrumentality of the United States.

[(6)] (8) Grant.--The term ``grant'' includes a cooperative agreement (within the meaning of chapter 63 of title 31, United States Code).

[(7)] (9) Indian tribe.--The term ``Indian tribe'' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

[(8)] (10) Secretary.--The term ``Secretary'' means the Secretary of Commerce.

[(9)] (11) State.--The term ``State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

[(10)] (12) United states.--The term ``United States'' means all of the States.

(13) Unused land.--The term ``unused land'' means any publicly-owned or privately-owned unused, underused, or abandoned land that is not contributing to the quality of life or economic well-being of the community in which the land is located.

* * * * * * *

SEC. 103. COORDINATION.

(a) Comprehensive Economic Development Strategies.--The Secretary shall coordinate activities relating to the preparation and implementation of comprehensive economic development strategies under this Act with Federal agencies carrying out other Federal programs, States, economic development districts, and other appropriate planning and development organizations.

(b) Brownfield Site Redevelopment.--The Secretary shall coordinate activities relating to the redevelopment of brownfield sites and the promotion of eco-industrial development under this Act with other Federal agencies, States, local governments, consortia of local governments, Indian tribes, nonprofit organizations, and public-private partnerships.

* * * * * * *

SEC. 210. GRANTS FOR BROWNFIELD SITE REDEVELOPMENT.

(a) In General.--On the application of an eligible recipient, the Secretary may make grants for projects to alleviate or prevent conditions of excessive unemployment, underemployment, blight, and infrastructure deterioration associated with brownfield sites, including projects consisting of--

(1) development of public facilities;
(2) development of public services;
(3) business development (including funding of a revolving loan fund);
(4) planning;
(5) technical assistance; and
(6) training.

(b) Criteria for Grants.--The Secretary may provide a grant for a project under this section only if--

(1) the Secretary determines that the project will assist the area where the project is or will be located to meet, directly or indirectly, a special need arising from--

(A) a high level of unemployment or underemployment, or a high proportion of low-income households;

(B) the existence of blight and infrastructure deterioration;

(C) dislocations resulting from commercial or industrial restructuring;

(D) outmigration and population loss, as indicated by--

(i)(I) depletion of human capital (including young, skilled, or educated

populations);
(II) depletion of financial capital (including firms and investment); or
(III) a shrinking tax base; and
(ii) resulting--
(I) fiscal pressure;
(II) restricted access to markets; and
(III) constrained local development potential; or
(E) the closure or realignment of--
(i) a military or Department of Energy installation; or
(ii) any other Federal facility; and

(2) except in the case of a project consisting of planning or technical assistance--
(A) the Secretary has approved a comprehensive economic development strategy for the area where the project is or will be located; and
(B) the project is consistent with the comprehensive economic development strategy.

(c) Particular Community Assistance.--Assistance under this section may include assistance provided for activities identified by a community, the economy of which is injured by the existence of 1 or more brownfield sites, to assist the community in--

(1) revitalizing affected areas by--
(A) diversifying the economy of the community; or
(B) carrying out industrial or commercial (including mixed use) redevelopment, or eco-industrial development, projects on brownfield sites or sites adjacent to brownfield sites;

(2) carrying out development that conserves environmental and agricultural resources by--
(A) reusing existing facilities and infrastructure;
(B) reclaiming unused land and abandoned buildings; or
(C) promoting eco-industrial development, and environmentally responsible development, of brownfield sites; or

(3) carrying out a collaborative economic development planning process, developed with broad-based and diverse community participation, that addresses the economic repercussions and opportunities posed by the existence of brownfield sites in an area.

(d) Direct Expenditure or Redistribution by Eligible Recipient.--

(1) In general.--Subject to paragraph (2), an eligible recipient of a grant under this section may directly expend the grant funds or may redistribute the funds to public and private entities in the form of a grant, loan, loan guarantee, payment to reduce interest

on a loan guarantee, or other appropriate assistance.

(2) Limitation.--Under paragraph (1), an eligible recipient may not provide any grant to a private for-profit entity.

[SEC. 210.] SEC. 211. CHANGED PROJECT CIRCUMSTANCES.

In any case in which a grant (including a supplementary grant described in section 205) has been made by the Secretary under this title (or made under this Act, as in effect on the day before the effective date of the Economic Development Administration Reform Act of 1998) for a project, and, after the grant has been made but before completion of the project, the purpose or scope of the project that was the basis of the grant is modified, the Secretary may approve, subject (except for a grant for which funds were obligated in fiscal year 1995) to the availability of appropriations, the use of grant funds for the modified project if the Secretary determines that--

(1) the modified project meets the requirements of this title and is consistent with the comprehensive economic development strategy submitted as part of the application for the grant; and

(2) the modifications are necessary to enhance economic development in the area for which the project is being carried out.

[SEC. 211.] SEC. 212. USE OF FUNDS IN PROJECTS CONSTRUCTED UNDER PROJECTED COST.

In any case in which a grant (including a supplementary grant described in section 205) has been made by the Secretary under this title (or made under this Act, as in effect on the day before the effective date of the Economic Development Administration Reform Act of 1998) for a construction project, and, after the grant has been made but before completion of the project, the cost of the project based on the designs and specifications that was the basis of the grant has decreased because of decreases in costs--

(1) the Secretary may approve, subject to the availability of appropriations, the use of the excess funds or a portion of the funds to improve the project; and

(2) any amount of excess funds remaining after application of paragraph (1) shall be deposited in the general fund of the Treasury.

[SEC. 212.] SEC. 213. REPORTS BY RECIPIENTS.

(a) In General.--Each recipient of assistance under this title shall submit reports to the Secretary at such intervals and in such manner as the Secretary shall require by regulation, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Contents.--Each report shall contain an evaluation of the effectiveness of the economic assistance provided under

this title in meeting the need that the assistance was designed to address and in meeting the objectives of this Act.

[SEC. 213.] SEC. 214. PROHIBITION ON USE OF FUNDS FOR ATTORNEY'S AND CONSULTANT'S FEES.

Assistance made available under this title shall not be used directly or indirectly for an attorney's or consultant's fee incurred in connection with obtaining grants and contracts under this title.

* * * * * * *

SEC. 704. AUTHORIZATION OF APPROPRIATIONS FOR BROWNFIELD SITE REDEVELOPMENT.

(a) In General.--In addition to amounts made available under section 701, there is authorized to be appropriated to carry out section 210 $60,000,000 for each of fiscal years 2003 through 2007, to remain available until expended.

(b) Federal Share.--Notwithstanding section 204, subject to section 205, the Federal share of the cost of activities funded with amounts made available under subsection (a) shall be not more than 75 percent.

* * * * * * *

Appendix F: Vermont Proposed Bill S. 42

BILL AS PASSED BY VERMONT SENATE 2003-2004
S.42

AN ACT RELATING TO CREATING AN OFFICE OF LAND RECYCLING, AND OTHERWISE REVISING THE BROWNFIELDS RECLAMATION PROGRAM

It is hereby enacted by the General Assembly of the State of Vermont:
Sec. 1. 10 V.S.A. § 6615(d)(3) is added to read:

(3) A municipality or other governmental entity shall have no liability under this section in regard to property acquired involuntarily through bankruptcy, tax delinquency, abandonment, or any other circumstance in which the property is acquired by virtue of its function as sovereign. A municipality that acquires property involuntarily may engage in any actions approved by the secretary in writing, including abatement, investigation, remediation, or removal activities to be conducted in response to a release or threatened release of hazardous materials.

Sec. 2. 10 V.S.A. § 6615a is amended to read:
§ 6615a. REDEVELOPMENT OF CONTAMINATED PROPERTIES PROGRAM

(a) Establishment of program. A property cleanup program is hereby created to enable certain interested parties to request the assistance of the secretary in reviewing and overseeing work plans to investigate, abate, remove, remediate and monitor those properties in exchange for protection from certain liabilities under section 6615 of this title. This program, to be called the "redevelopment of contaminated properties program," shall be established within the agency of natural resources, department of environmental conservation.

~~(1) Pilot project. Between the dates of January 1, 1998 and July 1, 2001, no more than five new projects may be eligible to participate in the pilot project established under this subdivision. Eligibility will be determined on a first-come first served basis, based upon the order in which applications are received, between those dates. An applicant will retain his or her rank in the order of filed applications as long as the secretary does not issue a finding that the applicant has failed to progress with the project in a timely fashion, in which case the next applicant will assume that ranking, and the applicant who is the subject of the failure to progress finding shall be moved to the bottom of the list. New applications to participate in the pilot project will not be accepted after July 1, 2001.~~

~~(2) Benefits of participation in pilot project. Participants in the pilot project will be entitled to all benefits specified in this section.~~

(b) Definitions. For the purposes of this section~~,~~:

(1) "~~eligible~~ Eligible person" ~~shall mean~~ means a person, as defined in section 6602 of this chapter, who has been determined to be eligible for the redevelopment of

contaminated properties program pursuant to subsection (f) of this section. The term "eligible person" shall include a secured lender who holds indicia of ownership in the property, as those indicia are described in section 6602(23) of this title, if the secured lender has been determined to be eligible for the redevelopment of contaminated properties program pursuant to subsection (f) of this section.

(2) "Remediation standards" means procedures developed by the secretary of natural resources for the remediation of contaminated properties. The secretary shall determine appropriate remedial standards on a site-specific basis and shall consider all the following:

(A) Future land use and the appropriate use of institutional controls.

(B) Environmental media, including soil, groundwater, surface water, and air.

(C) Requirements for source removal, treatment, or containment.

(D) Appropriate use of monitored natural attenuation.

(E) Any other issue related to the protection of public health and the environment.

* * *

(f) Eligibility.

* * *

~~(3) Notwithstanding the requirements of this section regarding the ineligibility of current owners, current owners shall be eligible if the property is contained within a downtown development district designated under the provisions of chapter 76A of Title 24, and as long as the owners and the property are otherwise eligible under the provisions of this section.~~

(g) Submittal and approval of site investigation.

* * *

(5) If the approved site investigation report concludes that no further investigation, abatement, removal, remediation or monitoring activities are required to adequately protect human health and the environment and to meet all applicable ~~cleanup~~ remediation standards, then the eligible person or successor may request a determination from the secretary that no additional investigation, abatement, removal, remediation, and monitoring activities are required.

(6) The secretary may determine that no abatement, removal, remediation or monitoring activities are required if the secretary determines all of the following:

* * *

(B) The releases or threatened releases that are not abated, removed or remediated do not pose an unacceptable risk to human health and the environment and meet the remediation standards.

* * *

(h) Submittal and approval of corrective action plan.

(1) If the approved site investigation report concludes that abatement, removal, remediation, or monitoring activities are required to adequately protect human health and the environment and to meet all applicable cleanup standards, the eligible person or successor shall submit a corrective action plan, which shall clearly describe the basis and details of a proposed cleanup strategy to insure technical feasibility, effective engineering design, reasonable costs, ~~and~~ protection of human health and the

environment, and in compliance with the remediation standards. The corrective action plan shall include the following elements:

* * *

(D) A description of applicable ~~state~~ remediation standards~~, including any standards establishing acceptable concentrations of constituents in soils, surface water, or groundwater and, for constituents present at the site for which such state standards do not exist, a description of the cleanup levels to be attained and any current risk to human health or the environment based upon the proposed use and any likely future use of the property~~.

* * *

(2) The secretary shall evaluate the corrective action plan, and shall either approve, approve with conditions, or disapprove the corrective action plan. The secretary may contract with private engineers, hydrologists, or site professionals of the secretary's sole choice to provide the investigation and review required by this subsection. The secretary shall set ~~such~~ the insurance, bond or other surety requirements of these professionals as the secretary may ~~deem appropriate~~ determine. The costs and expenses of any professionals retained by the secretary for this investigation shall be the sole responsibility of the eligible person. ~~If the secretary approves with conditions or disapproves the corrective action plan, the eligible person or successor shall submit a revised corrective action plan for approval or shall withdraw from the program.~~ If the secretary requests additional or corrected information at any time during evaluation of the corrective action plan, the eligible person or successor shall submit the information requested or withdraw from the program.

(3) The secretary may approve a corrective action plan for all, or a portion of, the releases or threatened releases at the property, if the secretary determines all of the following:

* * *

(B) The corrective action plan provides for all investigation, abatement, removal, remediation and monitoring activities required to protect human health and the environment and to meet all applicable ~~cleanup~~ remediation standards.

(C) The eligible person, or successor, in ~~writing, which~~ a written document that shall be binding upon any successor, agrees:

* * *

(4) If the secretary approves a corrective action plan that addresses only a portion of the releases or threatened releases at the property, the secretary must find that the releases or threatened releases that are not abated, removed or remediated pursuant to the corrective action plan do not pose an unacceptable risk to human health and the environment and are in compliance with the remediation standards.

(5) Prior to approval of the corrective action plan submitted pursuant to subdivision (h)(1) of this section, the secretary shall provide public notice, which may be satisfied by a notice published in a local newspaper generally circulated in the area where the property is located and written notice to the ~~town~~ clerk for the ~~town~~ municipality in which the property is located, provided together with a request that the notice be posted in a conspicuous place. The notice shall set forth any proposed abatement, investigation, remediation, removal, and monitoring activities; shall state that the secretary is considering approval of a corrective action plan providing for such

activities; shall request public comment on the proposed activities within 15 days after publication; and shall state the name, telephone number and address of an agency official able to answer questions and receive comments on the matter. The public comment period may be extended by the secretary if public interest warrants the extension. The secretary shall review public comment, if any, prior to approval of the corrective action plan. The decision of the secretary as to whether a corrective action plan should be approved is within the secretary's sole discretion and is final. Upon approval of a corrective action plan, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person or successor, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person or successor has completed the various stages of the process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff.

(A) ~~With respect to properties in the pilot project established under subdivision (a)(1) of this section, except in the case of~~ Except for a corrective action plan adjustment as provided under subdivision (h)(5)(B) of this section, once the secretary has approved a corrective action plan, the secretary may not amend the plan, unless amendment is requested by an eligible person or successor.

(B) With respect to ~~properties in the pilot project established under subdivision (a)(1) of this section~~ eligible persons, prior to becoming an owner or operator of an eligible property, the secretary may amend the approved plan by requiring ~~a one-time corrective action plan~~ adjustment~~, as deemed in the public interest by the secretary, which may increase the costs of completing~~ provided the adjustments to the corrective action plan shall increase the costs of completion by no more than 30 percent of the estimated costs of the original corrective action plan. ~~In this instance, this amended plan is the plan that must be performed successfully before obtaining a certificate of completion, unless further amendment is requested by an eligible person or successor.~~ If the secretary determines that the corrective action plan and all adjustments to that plan have been substantially completed and that all fees and costs due under this section have been paid, the secretary shall issue a certificate of completion. The certificate of completion shall certify that the work is completed and, in addition to the requirements under subsection (k) of this section, may include conditions for operations and monitoring.

(C) ~~With respect to properties in the pilot project established under subdivision (a)(1) of this section, notwithstanding~~ Notwithstanding the fact that the secretary issues a certificate of completion under subsection (k) of this section, if at any time the secretary finds that a completed corrective action plan fails to adequately protect human health and the environment and fails to meet all applicable ~~state brownfields~~ remediation and federal cleanup standards, the secretary may do any of the following:

(i) ~~exercise~~ Exercise authority under section 6615 of this title against any liable person, except the person or the successor of the person that completed the corrective action plan~~; and~~ .

(ii) ~~perform~~ Perform all investigation, abatement, removal, remediation, or monitoring activities necessary to ensure the property meets the standards.

(6) Upon approval of a corrective action plan, and any amendments to that plan, the secretary shall complete and present to the eligible person or successor a brief document titled, "Notice of approved corrective action plan for contaminated property." The document shall summarize the nature of the contamination identified on the property and the major components of the corrective action plan, and shall state that the property is subject to the "Redevelopment of Contaminated Property Program." If it is possible that future uses of the property may be restricted, the document shall state that fact. The document shall include any restrictions on future uses and shall signify where any approved corrective action plan may be reviewed in its entirety. The person receiving a notice of approved corrective action plan for contaminated property shall file it in the land records for the ~~town~~ municipality in which the property is located.

(i) Performance of the corrective action plan.

(1) The eligible person or successor shall perform all investigation, abatement, remediation, removal, and monitoring activities in accordance with the approved corrective action plan and all amendments to the plan, and with all applicable local, state and federal law. The corrective action plan may be amended during its performance, subject to approval by the secretary. At any time during the performance of a corrective action plan, except as otherwise provided in this section ~~with respect to properties participating in the pilot project created under subsection (a) of this section~~, the plan may be amended, as necessary to attain the cleanup levels established in the corrective action plan.

* * *

(k) Certificate of completion.

(1) After completion of all of the activities required under the corrective action plan, the eligible person or successor shall file a completion report with the secretary. The completion report shall describe the activities performed under the corrective action plan and any amendments to the plan; describe any problems encountered; and include a certification by the eligible person or successor that the activities were performed in accordance with the corrective action plan. Upon receipt of the completion report, the secretary will determine ~~if the corrective action plan has been completed and if additional work is required; except that, in case of a project participating in the pilot project created under subsection (a) of this section, the secretary may only determine~~ whether additional work is required in order to complete the plan. The eligible person or successor shall perform any additional activities specified by the secretary necessary to complete the corrective action plan and shall submit a new completion report. Once the secretary determines that the eligible person or successor has successfully completed the corrective action plan, and has paid all fees and costs due under this section, the secretary shall issue a certificate of completion, which shall certify that the work is completed and shall include a description of any land use restrictions and any other conditions required by the corrective action plan.

* * *

(l) Program funding.

(1) Creation of fund. There is created a brownfields revitalization fund, which shall be a special fund created under subchapter 5 of chapter 7 of Title 32, to be administered by the secretary of the agency of commerce and community development

to aid applicants in the redevelopment of contaminated properties program with the characterization, assessment and remediation of sites. Money received by the secretary of the agency of natural resources for assistance rendered in connection with the program shall be deposited in the redevelopment of contaminated properties account of the environmental contingency fund established in section 1283 of this title.

* * *

(3) Applications for assistance. Program applicants may apply to the secretary of commerce and community development for assistance from the brownfields revitalization fund in the form of a grant or loan to complete characterization, assessment or remediation of a site ~~as part of a plan approved by the secretary of natural resources under this program~~ only after receiving approval of an appropriate work plan by the secretary of natural resources. Approval of work plans shall be contingent on participation in the Vermont redevelopment of contaminated properties program, unless the project under consideration is determined ineligible for the program, but is otherwise determined appropriate for funding under this subsection.

* * *

(5) Grants.

* * *

(6) Loans.

* * *

(G) Contractual authority; reports

* * *

(ii) Annually, by January 15, the secretary of commerce and community development and VEDA, in consultation with the secretary of natural resources, shall submit a report to members of the joint fiscal committee, the senate committees on economic development, housing, and general affairs and on natural resources and energy, and the house committees on commerce and on natural resources setting out the balance of the fund created under this section, grant and loan awards made to date, funds anticipated to be made available in the coming year, information relating to brownfield remediation activities, including the number, location, and status of brownfield sites, and any other matters of interest.

(E) All reports generated with the assistance of grants awarded under the brownfields revitalization fund, including site assessments, site investigations, feasibility studies, corrective action plans, and completion reports, shall be provided to the secretary in hard copy and in electronic form.

* * *

(n) The agency of natural resources and the agency of commerce and community development shall jointly develop a state plan for brownfields reclamation that shall include:

(1) An inventory and assessment of potential sites prioritized by the ease of reducing the threat to public health, the availability of development opportunities, and the highest expected return on public investment.

(2) Methods and strategies for coordinating remediation with eventual usage of the sites, reclamation of high priority projects, financing projects with various public and private funding, and assuring consistent investment by the state for a minimum of ten

years in order to return as many properties as possible to recreation, parks, green space, housing, and commercial uses.

Sec. 3. 32 V.S.A. § 10103(b) is amended to read:

(b) The following hazardous wastes are exempt from the tax imposed by subsections (a) and (e) of this section provided that the exemption is noted on a manifest or other report in the manner prescribed by the secretary:

* * *

(5) hazardous waste generated by a facility onsite~~, which~~ that is recycled onsite; ~~or~~

(6) hazardous waste ~~which~~ that has been previously taxed in Vermont, provided:

(A) the person shipping the previously taxed waste has not held the waste for more than 180 days; and

(B) if the waste has been mixed, the resulting mixture does not change the applicable U.S. Department of Transportation shipping description from that which applied before the waste was mixed;

(7) hazardous waste shipped in implementing a corrective action plan approved by the secretary of natural resources under 10 V.S.A. § 6615a, the redevelopment of contaminated properties program, provided that the secretary determines that the corrective action plan has been successfully completed and issues a certificate of completion, as provided under that section.

Sec. 4 INSURANCE PRODUCTS FOR CONTAMINATED PROPERTY; REPORT

The secretary of commerce and community development, in cooperation with the commissioner of banking, insurance, securities, and health care administration, with advice from representatives of financial institutions, hazardous materials management specialists, and insurance institutions, shall investigate the availability of various insurance products that would improve the feasibility of brownfields redevelopment projects. On or before January 1, 2004, the secretary shall issue a written report of the findings to the General Assembly.

Sec. 5. Sec. 7 of No. 44 of the Acts of 1995, as amended in Sec. 1 of No. 14 of the Acts of 2001, is amended to read:

Sec. 7. APPLICATION DEADLINE

Applications to participate in the program established under 10 V.S.A. § 6615a shall not be accepted after July 1, ~~2006~~ 2008.

HOUSE PROPOSED AMENDMENT TO S.42 (2004)

AN ACT RELATING TO CREATING AN OFFICE OF LAND RECYCLING, AND OTHERWISE REVISING THE BROWNFIELDS RECLAMATION PROGRAM

The House proposes to the Senate to amend the bill as follows:

First: By striking Sec. 1 and inserting in lieu thereof the following:

Sec. 1. 10 V.S.A. § 6615(d)(3) is added to read:

(3) A municipality shall not be liable under this section provided that the municipality can show all the following:

(A) The property was acquired by virtue of its function as sovereign through bankruptcy, tax delinquency, abandonment, or other similar circumstances.

(B) The municipality did not cause or contribute to the contamination of the property.

(C) The municipality has entered into an agreement with the secretary regarding sale of the property acquired or has undertaken abatement, investigation, remediation, or removal activities as required by section 6615a of this title.

Second: In Sec. 2, 10 V.S.A. § 6615a, in subdivision (h)(2), at the end of the third sentence, after the word "determine" and before the period, by adding the following: ", provided those requirements are not lower than the insurance requirements set forth in the standard state contract provisions"

Third: In Sec. 3, 32 V.S.A. § 10103(b)(7), by striking the words "determines that the corrective action plan has been successfully completed and"

Fourth: In Sec. 4, by striking the words "commissioner of banking, insurance, securities, and health care administration" and inserting in lieu thereof the words " commissioner of buildings and general services" and by striking the date "January 1, 2004" and inserting in lieu thereof the date "January 1, 2005"

Fifth: By adding new Secs. 6-12 to read as follows:

Sec. 6. 30 V.S.A. § 202c is amended to read:

§ 202c. STATE TELECOMMUNICATIONS; POLICY AND PLANNING

(a) The general assembly finds that advances in telecommunications technology and changes in federal regulatory policy are rapidly reshaping telecommunications services, thereby promising the people and businesses of the state ~~vastly~~ improved communication and access to information, ~~but shifting costs to local telephone users and threatening universal basic service~~ while creating new challenges for maintaining a robust, modern telecommunications network in Vermont.

(b) Therefore, to direct the benefits of improved telecommunications technology to all Vermonters, it is the purpose of this section and section 202d of this title to:

(1) ~~strengthen~~ Strengthen the state's role in telecommunications planning~~; and~~.

~~(1) protect basic local exchange telephone service to Vermont residents by permitting the state to enter into a contract with providers of such services, at reasonable cost and superior quality;~~

~~(2) provide the benefits of advances in telecommunications technology to Vermont residents either through a contract or by supporting competition through the reduction or suspension of regulatory requirements over any telecommunications service in which a competitive market exists;~~

~~(3) strengthen the state's role in telecommunications planning; and~~

~~(4) separate and make independent from the planning and regulatory agencies the function of public advocacy for advocating, monitoring and reporting on contracts for basic exchange telephone services.~~

(2) Support the universal availability of affordable and appropriate infrastructures and services for transmitting voice and high-speed data.

(3) Support the availability of modern mobile wireless telecommunications services along the state's travel corridors and in the state's communities.

(4) Provide for high-quality, reliable telecommunications services for Vermont businesses and residents.

(5) Provide the benefits of future advances in telecommunications technologies to Vermont residents and businesses.

(6) Support competitive choice for consumers among telecommunications service providers.

(7) Support the application of telecommunications technology to maintain and improve governmental and public services, public safety, and the economic development of the state.

Sec. 7. 30 V.S.A. § 202d is amended to read:

§ 202d. TELECOMMUNICATIONS ~~PLANNING~~ PLAN

(a) The department of public service~~, through the director for regulated utility planning,~~ shall constitute the responsible ~~utility~~ planning agency of the state for the purpose of obtaining for all consumers in the state stable and predictable ~~local exchange rates and toll~~ rates and a technologically advanced telecommunications network serving all ~~local exchange~~ service areas in the state. The ~~director~~ department of public service shall be responsible for the provision of plans for meeting emerging trends related to telecommunications~~, demand, supply, basic services,~~ technology, markets, financing, and competition.

(b) The department~~, through the director,~~ of public service shall prepare a telecommunications plan for the state. The department of innovation and information and the agency of commerce and community development shall assist the department of public service in preparing the plan. The plan shall be for a ~~10 year~~ seven-year period and shall serve as a basis for state telecommunications policy. ~~The plan shall include at a minimum~~ Prior to preparing the plan, the department of public service shall prepare:

(1) an overview, looking ~~ten~~ seven years ahead, of ~~statewide growth and development as they relate to~~ future requirements for telecommunications services, ~~including patterns of urban expansion, statewide and service area economic growth,~~

~~shifts in transportation modes,~~ considering services needed for economic development, technological advances, and other trends and factors which, as determined by the ~~director~~ department of public service, will significantly affect state telecommunications policy and programs;

(2) a survey of Vermont residents and businesses, conducted in cooperation with the agency of commerce and community development, to determine what telecommunications services are needed now and in the succeeding ~~ten~~ seven years;

(3) ~~a study and evaluation of conversion to measured service as ordered by the board~~ an assessment of the current state of telecommunications infrastructure, including, to the best of the department's ability, the effects of the sales and use tax exemption authorized pursuant to 32 V.S.A. § 9741(48);

(4) an assessment, conducted in cooperation with the department of innovation and information, of the current state telecommunications system and evaluation of alternative proposals for upgrading the system to provide the best available and affordable technology for use by government; and

(5) an assessment of the state of telecommunications networks and services in Vermont relative to other states, including price comparisons for key services and comparisons of the state of technology deployment.

(c) In developing the plan, the department shall take into account the policies and goals of section 202c of this title~~, and the need for basic service at affordable rates, improved competition among providers, the needs of the state as user of telecommunications services, and future development of the state~~.

(d) In establishing plans, public hearings shall be held and the ~~director~~ department of public service shall consult with members of the public, representatives of ~~telephone~~ telecommunications utilities, other providers, and other interested state agencies, particularly the agency of commerce and community development and the department of innovation and information, whose views shall be considered in preparation of the plan. To the extent necessary, the ~~director~~ department of public service shall include in the plan~~,~~ surveys to determine existing plant, needed and desirable plant improvements and extensions, access and coordination between telecommunications providers, methods of operations, and any change that will produce better service or reduce costs. To this end, the director may require the submission of data by each company subject to supervision by the public service board as deemed desirable by the ~~director deems desirable~~ commissioner of public service.

(e) Before adopting a plan, the department shall conduct public hearings on a final draft and shall consider the evidence presented at such hearings in preparing the final plan. At least one hearing shall be held jointly with committees of the general assembly designated by the general assembly for this purpose. ~~The department shall then accept the plan or modify it in accordance with the evidence presented at such hearings.~~ The plan shall be adopted by ~~January 1, 1989~~ June 1, 2004.

(f) ~~The director shall annually review that portion of a plan which extends over the next three years.~~ The department, ~~through the director, shall annually extend the plan~~

~~by one additional year; and~~ from time to time, but in no event less than every three years, institute proceedings to review a plan and make revisions, where necessary. The ~~three year~~ three-year major review ~~and any interim revisions~~ shall be made according to the procedures established in this section for initial adoption of the plan. For good cause or upon request by a joint resolution passed by the general assembly, an interim review and revision of any section of the plan may be made after conducting public hearings on the interim revision. At least one hearing shall be held jointly with committees of the general assembly designated by the general assembly for this purpose.

Sec. 8. 22 V.S.A. § 901 is amended to read:

§ 901. CREATION OF DEPARTMENT

There is created the department of information and innovation within the agency of administration. The department shall have all the responsibilities assigned to it by law, including the following:

* * *

(9) to inventory technology assets within state government; ~~and~~

(10) to coordinate information technology training within state government; and

(11) to support the statewide development of broadband telecommunications infrastructure and services at rates competitive within the national marketplace when purchasing telecommunications services or facilities, or through sharing of bandwidth with service providers or other users, equipment collocation arrangements with service providers, or other reasonable arrangements, in a manner consistent with the telecommunications plan prepared pursuant to 30 V.S.A. § 202d and community development objectives established by the agency of commerce and community development.

Sec. 9. COMPENSATION FOR LEASE OF STATE PROPERTY

Prior to January 1, 2007, the secretary of administration, when acting pursuant to his or her authority under 30 V.S.A. § 227b, shall be authorized to lease the use of state property for the purpose of providing wireless telecommunications services to the public and to waive compensation due to the state for a period not to exceed three years from the date of installation. Compensation shall only be waived based upon a wireless telecommunications service provider having first entered into a written agreement with the commissioner to reimburse the state for any costs associated with site preparation, permitting, development, and removal of equipment, and having certified and provided documentation demonstrating that:

(1) the site located on state property will provide new or improved service; and

(2) there are no reasonable alternative sites which would serve a substantially similar area which are commercially available.

Sec. 10. 32 V.S.A. § 9741(48) is added to read:

(48)(A) Machinery, equipment, and fixtures purchased by a communications service provider, whether or not the service provider is subject to the jurisdiction of the public service board pursuant to 30 V.S.A. § 203(5), which the secretary of commerce and community development and the commissioner of public service certify will be used

to provide two-way mobile communications service or advanced services in municipalities of the state identified by the secretary as unserved or underserved and which appear on a list published annually by the commissioner of taxes. A certificate issued by the secretary under this subdivision shall be valid for up to three years from the date of issuance but in no case shall it be valid after June 30, 2008.

(B) For the purposes of this subdivision "advanced services" are as defined in 47 C.F.R. § 51.5, unless otherwise defined by rule by the secretary of commerce and community development. In adopting a rule, the secretary shall consider, among other factors, trends in the development of telecommunications technology and the type of data communications or broadband internet services with transmission speeds and other characteristics as necessary sufficient to meet the emerging communications needs of businesses and households.

(C) Property shall be exempt under this subsection only if used within 36 months from the publication date of the list. In determining the list of unserved and underserved municipalities, the following shall be taken into consideration:

(i) the percentage of the population able to access the services;

(ii) the affordability of the services;

(iii) the economic stability of the existing service providers;

(iv) the viability of the communications technology; and

(v) the quality and reliability of the service.

(D) The secretary shall not issue an exemption certificate under this subdivision if the proposed services are of the same type as services currently available to the proposed population.

Sec. 11. REPORT

The Secretary of Commerce and Community Development shall, by January 15, 2006, and again by January 15, 2008, report to the General Assembly on the effectiveness of the telecommunications service sales tax exemption under 32 V.S.A. § 9741(48). The report shall include a description of:

(1) each municipality which has been listed as unserved or underserved and the date of the initial listing;

(2) each municipality which has been removed from the unserved or underserved list, and the date of removal from the list;

(3) communications services which have been provided to each municipality reported under subdivision (2) of this section, and a description of the extent, quality, viability, and affordability of those services;

(4) the amount of sales and use tax exempted each fiscal year under 32 V.S.A. § 9741(48), as reported to the secretary by certificate recipients;

(5) the foregone lease revenues in each fiscal year for each lease of state property to a wireless telecommunications service provider under Sec. 4 of this act.

Sec. 12. EFFECTIVE DATE

This act shall take effect from passage, except Sec. 10 (sales tax exemption for telecommunications equipment), shall apply to sales and uses occurring after June 30, 2005, but before July 1, 2008; and 32 V.S.A. § 9741(48) is repealed effective July 1, 2008.

and, upon passage, the title shall be amended to read:
“AN ACT RELATING TO THE REDEVELOPMENT OF CONTAMINATED PROPERTIES PROGRAM, STATE TELECOMMUNICATIONS POLICY, AND THE SALES AND USE TAX ON TELECOMMUNICATIONS EQUIPMENT”

Appendix G: Vermont Proposed Bill S. 128

S.128

Introduced by Senator Ide of Caledonia County

Referred to Committee on

Date:

Subject: Conservation; solid waste; contaminated property

Statement of purpose: This bill proposes to revise the program for the redevelopment of contaminated properties so as to create a "brownfields remediation standard," which would be established on a site-by-site basis, upon giving consideration to a number of specified factors that relate in part to the future uses of the property in question. Then, conforming changes in the section allow remediation to occur, but require only that the brownfields remediation standard be met. The bill also proposes to subject to binding arbitration all findings, evaluations, determinations, approvals, or disapprovals issued by the secretary under the contaminated property program.

AN ACT RELATING TO ESTABLISHING A BROWNFIELDS REMEDIATION STANDARD

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 6615a is amended to read:

§ 6615a. REDEVELOPMENT OF CONTAMINATED PROPERTIES PROGRAM

(a) Establishment of program. A property cleanup program is hereby created to enable certain interested parties to request the assistance of the secretary in reviewing and overseeing work plans to investigate, abate, remove, remediate, and monitor those properties in exchange for protection from certain liabilities under section 6615 of this title. This program, to be called the "redevelopment of contaminated properties program," shall be established within the agency of natural resources, department of environmental conservation.

~~(1) Pilot project. Between the dates of January 1, 1998 and July 1, 2001, no more than five new projects may be eligible to participate in the pilot project established under this subdivision. Eligibility will be determined on a first-come first served basis, based upon the order in which applications are received, between those dates. An applicant will retain his or her rank in the order of filed applications as long as the secretary does not issue a finding that the applicant has failed to progress with the project in a timely fashion, in which case the next applicant will assume that ranking, and the applicant who is the subject of the failure to progress finding shall be moved to the bottom of the list. New applications to participate in the pilot project will not be accepted after July 1, 2001.~~

~~(2) Benefits of participation in pilot project. Participants in the pilot project will be entitled to all benefits specified in this section.~~

(b) Definitions. For the purposes of this section~~,~~:

(1) "~~eligible~~ Eligible person" shall mean a person, as defined in section 6602 of this chapter, who has been determined to be eligible for the redevelopment of contaminated properties program pursuant to subsection (f) of this section. The term "eligible person" shall include a secured lender who holds indicia of ownership in the property, as those indicia are described in section 6602(23) of this title, if the secured lender has been determined to be eligible for the redevelopment of contaminated properties program pursuant to subsection (f) of this section.

(2) "Brownfields remediation standards" means a level of pollution abatement or remediation not otherwise within the concentration parameters of the applicable state enforcement standards which are compatible with the intended future use of the property and adjacent properties. The levels shall be determined on a site-by-site basis and shall be based upon public health risk estimates which include the following:

(A) the public health risk, both short-term and cumulative, resulting from contact exposure to onsite contaminants;

(B) whether the contaminants under consideration for remediation will naturally attenuate without significant off-site migration;

(C) whether natural attenuation will likely produce within a 10-year period a level of remediation similar to the outcome forecast by a prudent environmental engineer, using active remediation systems or processes then available;

(D) whether off-site migration of groundwater which exceeds the applicable state enforcement standard will adversely affect the value of adjacent or other affected properties or the groundwater sources in use or potentially subject to use on those properties, and whether that migration presents significant public health risk related to that off-site migration;

(E) whether any on-site or off-site exposure potential, whether short-term or cumulative, can be adequately protected by institutional controls, as opposed to active remediation.

* * *

(e) Application process.

(1) A person shall submit to the secretary a complete application consisting of:

(A) the information required by the program application;

(B) a nonrefundable application fee of $500.00;

(C) a preliminary environmental assessment of the property, including a legal description of the property; a description of the physical characteristics of the property; all information known to, or in the control of, the person concerning the operational history of the property, the nature and extent of releases and threatened releases at the property and the risks to human health and the environment from releases or threatened releases; and any other information requested by the secretary regarding the property;

(D) a description of the proposed redevelopment and use of the property;

(E) any information necessary for the secretary to make the findings required in subsection (f) of this section;

(F) a written report demonstrating the applicant has provided the public with notice and a reasonable opportunity to submit comments to the secretary on the information and material referenced in subdivisions (1)(C) and (D) of this subsection; and

(G) a certification, under oath and notarized, from the person:

(i) that each person who would benefit from any protection from liability pursuant to subdivision (c)(1) of this section has fully and accurately disclosed to the secretary all information currently known to the person, or in the person's possession or control, which relates to releases or threatened releases of hazardous materials at the property; and

(ii) that, as to each person who would benefit from any protection from liability pursuant to subdivision (c)(1) of this section, neither that person nor any of its principals, owners, directors, affiliates or subsidiaries:

(I) currently holds or ever held an ownership interest in the property or in any related fixtures or appurtenances, excluding a secured lender's holding indicia of ownership in the property primarily to assure the repayment of a financial obligation, and except in the case of an innocent owner as specified in subdivision (f)(1)(B)(ii) of this section;

(II) directly or indirectly caused or contributed to any releases or threatened releases of hazardous materials at the property;

(III) currently operates or controls, or ever operated or controlled the operation, at the property, of a facility for the storage, treatment, or disposal of hazardous materials from which there was a release;

(IV) disposed of, or arranged for the disposal of hazardous materials at the property; or

(V) generated hazardous materials that were disposed of at the property.

(2) Not more than 30 days after the secretary receives a complete application, the secretary shall determine if the person is eligible to participate in the program pursuant to subsection (f) of this section and shall notify the person in writing. ~~The determination of eligibility is within the secretary's sole discretion and is final.~~ Together with notice, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person has completed the various stages of the process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff. In addition, the secretary shall inform any eligible or potentially eligible person under this section:

(A) that all findings, evaluations, determinations, approvals, or disapprovals by the secretary shall be subject to binding arbitration pursuant to the provisions of 12 V.S.A. chapter 192;

(B) that the secretary of commerce and community development shall be an interested party entitled to intervene as a matter of right in any binding arbitrations;

(C) that each adjacent property owner shall upon request be granted party status;

(D) that each town or village in which the property is located and each pertinent regional development corporation shall have party status.

(3) An eligible person or successor may withdraw from the program at any time subject to the obligations of an eligible person or successor under subsection (j) of this section.

* * *

(g) Submittal and approval of site investigation.

(1) If the secretary determines that a person is eligible under subsection (f) of this section, the eligible person or successor shall submit a site investigation work plan to the secretary and a fee of $5,000.00 to be applied toward the direct and indirect costs of the secretary's review and oversight of the performance of the site investigation and any corrective action plan. The work plan shall identify the person or persons to conduct the site investigation, who shall carry appropriate insurance, post a bond in an amount specified by the secretary, meet other qualifications as determined by the secretary, or any combination of ~~the above~~ these, as determined by the secretary. The work plan shall describe a site investigation which fulfills the following objectives:

(A) to define the nature, source, degree, and extent of the contamination;

(B) to define all possible pathways for contaminant migration;

(C) to present data that quantify the amounts of contaminants migrating along each pathway;

(D) to define all relevant sensitive receptors, including but not limited to public or private water supplies, surface waters, wetlands, sensitive ecological areas, outdoor and indoor air, and enclosed spaces such as basements, sewers and utility corridors;

(E) to determine the risk of contamination to human health and the environment;

(F) to gather sufficient information to identify appropriate abatement, removal, remediation and monitoring activities;

(G) to gather sufficient information to provide a preliminary recommendation, with justification, for abatement, removal, remediation and monitoring activities.

(2) The secretary shall evaluate the site investigation work plan and shall either approve, approve with conditions or disapprove the site investigation work plan. The secretary may contract with private engineers, hydrologists or site professionals of the secretary's sole choice to provide the investigation and review required by this subsection. The secretary shall set such insurance, bond or other surety requirements of these professionals as the secretary may deem appropriate. The costs and expenses of any professionals retained by the secretary for this investigation shall be the sole responsibility of the eligible person. If the secretary approves the site investigation work plan with conditions or disapproves, the eligible person or successor shall resubmit a revised site investigation work plan for approval or shall withdraw from the program. If the secretary requests additional or corrected information at any time during the evaluation of the site investigation work plan, the eligible person or successor shall submit the information requested or withdraw from the program.

(3) Together with notice of approval of a site investigation work plan, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person or successor, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person or successor has completed the various stages of the process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff. After the secretary approves the site investigation work plan, the eligible person or successor shall perform the site investigation in accordance with the approved work plan and all applicable law.

(4) After completion of the site investigation, the eligible person or successor shall submit a site investigation report which describes the information gathered and provides recommendations addressing the objectives identified in subdivisions (g)(1)(A) through (G) of this section. The secretary may approve the site investigation report, or may require revisions to the report, further site investigation work under an amended site investigation work plan, or both, prior to approval of the report.

(5) If the approved site investigation report concludes that no further investigation, abatement, removal, remediation or monitoring activities are required to adequately protect human health and the

environment and to meet ~~all applicable cleanup standards~~ the brownfields remediation standard, then the eligible person or successor may request a determination from the secretary that no additional investigation, abatement, removal, remediation, and monitoring activities are required.

(6) The secretary may determine that no abatement, removal, remediation or monitoring activities are required if the secretary determines all of the following:

(A) Redevelopment and reuse of the property will not cause, allow, contribute to, or worsen any release or threatened release of hazardous materials at the property.

(B) The releases or threatened releases that are not abated, removed or remediated ~~do not pose an unacceptable risk to human health and the environment~~ meet the brownfields standard criteria.

(C) The eligible person, or successor, agrees in writing, which shall be binding upon any successor, to cooperate with, and to provide access to the secretary, and to any person liable under section 6615 of this title, acting subject to the approval of the secretary, for the purpose of taking any investigation, abatement, removal, remediation or monitoring activities at the property.

(h) Submittal and approval of corrective action plan.

(1) If the approved site investigation report concludes that abatement, removal, remediation, or monitoring activities are required to adequately protect human health and the environment and to meet all applicable cleanup standards, the eligible person or successor shall submit a corrective action plan, which shall clearly describe the basis and details of a proposed cleanup strategy to insure technical feasibility, effective engineering design, reasonable costs, and protection of human health ~~and the environment~~ compatible with the brownfields standard. The corrective action plan shall include the following elements:

(A) A description of all releases or threatened releases existing at the property.

(B) A proposal for abatement, removal, and remediation of any release or threatened release and any condition which has led or could lead to a release or threatened release.

(C) A proposal for continuing monitoring of the property during and after the investigation, abatement, removal, and remediation activities are completed.

(D) A description of ~~applicable state standards, including any standards establishing acceptable concentrations of constituents in soils, surface water, or groundwater and, for constituents present at the site for which such state standards do not exist, a description of~~ the cleanup levels to be attained ~~and any current risk to human health or the environment based upon the proposed use and any likely future use of the property~~ through application of the brownfields remediation standard.

(E) Plans for all of the following;

(i) Quality assurance.

(ii) Sampling and analysis.

(iii) Health and safety considerations.

(iv) Data management and recordkeeping.

(F) A proposed schedule for the implementation of each task set forth in the proposed corrective action plan.

(2) The secretary shall evaluate the corrective action plan, and shall either approve, approve with conditions, or disapprove the corrective action plan. The secretary may contract with private engineers, hydrologists, or site professionals of the secretary's sole choice to provide the investigation and review required by this subsection. The secretary shall set such insurance, bond or other surety requirements of these professionals as the secretary may ~~deem appropriate~~ determine. The costs and expenses of any professionals retained by the secretary for this investigation shall be the sole responsibility of the eligible person. ~~If the secretary approves with conditions or disapproves the corrective action plan, the eligible person or successor shall submit a revised corrective action plan for approval or shall withdraw from the program.~~ If the secretary requests additional or corrected information at any time during evaluation of the corrective action plan, the eligible person or successor shall submit the information requested or withdraw from the program.

(3) The secretary may approve a corrective action plan for all, or a portion of, the releases or threatened releases at the property, if the secretary determines all of the following:

(A) Activities in accordance with the approved corrective action plan, and the redevelopment and use of the property will not cause, allow, contribute to, or worsen any release or threatened release of hazardous materials.

(B) The corrective action plan provides for all investigation, abatement, removal, remediation and monitoring activities required ~~to protect human health and the environment and to meet all applicable cleanup standards~~ pursuant to the applicable brownfields remediation standard.

(C) The eligible person, or successor, in writing, which shall be binding upon any successor, agrees:

(i) to comply with all rules and procedures of the secretary and to obtain all necessary permits, certifications, and other required authorizations prior to beginning corrective action plan activities;

(ii) to cooperate with the secretary throughout the performance of investigation, abatement, removal, remediation, and monitoring activities;

(iii) to cooperate with, and to provide access to, the secretary for the purpose of taking any investigation, abatement, removal, remediation, or monitoring activities at the property; and

(iv) to cooperate with, and to provide access to any person liable under section 6615 of this section, acting subject to the approval of the secretary, for the purpose of taking any investigation, abatement, removal, remediation, or monitoring activities at the property.

(4) If the secretary approves a corrective action plan that addresses only a portion of the releases or threatened releases at the property, the secretary must find that the releases or threatened releases that are not abated, removed or remediated pursuant to the corrective action plan ~~do not pose an unacceptable risk to human health and the environment~~ are compatible with the brownfields remediation standard.

(5) Prior to approval of the corrective action plan submitted pursuant to subdivision (h)(1) of this section, the secretary shall provide public notice, which may be satisfied by a notice published in a local newspaper generally circulated in the area where the property is located and written notice to the town clerk for the town in which the property is located, provided together with a request that the notice be posted in a conspicuous place. The notice shall set forth any proposed abatement, investigation, remediation, removal, and monitoring activities; shall state that the secretary is considering approval of a corrective action plan providing for such activities; shall request public comment on the proposed activities within 15 days after publication; and shall state the name, telephone number and address of an agency official able to answer questions and receive comments on the matter. The public comment period may be extended by the secretary if public interest warrants the extension. The secretary shall review public comment, if any, prior to approval of the corrective action plan. The decision of the secretary as to whether a corrective action plan should be approved is ~~within the secretary's sole discretion and is final~~ a determination which is subject to binding arbitration pursuant to 12 V.S.A. chapter 192. Upon approval of a corrective action plan, the secretary shall inform the person, in general, of future requirements under this section that must be met by the eligible person or successor, and shall provide the person with a tentative schedule that establishes the processing times that the agency is likely to require, once an eligible person or successor has completed the various stages of the process established under this section, depending upon the scope and complexity of the project in question, and other demands on agency staff.

(A) With respect to properties in the pilot project established under subdivision (a)(1) of this section, except in the case of a corrective action plan adjustment as provided under subdivision (h)(5)(B) of this section, once the secretary has approved a corrective action plan, the secretary may not amend the plan, unless amendment is requested by an eligible person or successor.

(B) With respect to properties in the pilot project established under subdivision (a)(1) of this section, the secretary may amend the approved plan by requiring a one-time corrective action plan adjustment, as deemed in the public interest by the secretary, which may increase the costs of completing the corrective action plan by no more than 30 percent. In this instance, this amended plan is the plan that must be performed successfully before obtaining a certificate of completion, unless further amendment is requested by an eligible person or successor.

(C) With respect to properties in the pilot project established under subdivision (a)(1) of this section, notwithstanding the fact that the secretary issues a certificate of completion under subsection (k) of this section, if at any time the secretary finds that a completed corrective action plan fails to ~~adequately protect human health and the environment and fails to~~ meet ~~all applicable state and federal cleanup standards~~ the applicable brownfields contamination standard, the secretary may:

(i) exercise authority under section 6615 of this title against any liable person, except the person or the successor of the person that completed the corrective action plan; and

(ii) perform all investigation, abatement, removal, remediation, or monitoring activities necessary to ensure the property meets the standards.

(6) Upon approval of a corrective action plan, and any amendments to that plan, the secretary shall complete and present to the eligible person or successor a brief document titled, “Notice of approved corrective action plan for contaminated property.” The document shall summarize the nature of the contamination identified on the property and the major components of the corrective action plan, and shall state that the property is subject to the “Redevelopment of Contaminated Property Program.” If it is possible that future uses of the property may be restricted, the document shall state that fact. The document shall signify where any approved corrective action plan may be reviewed in its entirety. The person receiving a notice of approved corrective action plan for contaminated property shall file it in the land records for the town in which the property is located.

* * *

Appendix H: Vermont Proposed Bill S. 296

S.296

Introduced by Senator Miller of Chittenden County, Senator Dunne of Windsor County, Senator Campbell of Windsor County and Senator Mullin of Rutland County

Referred to Committee on

Date:

Subject: Economic development; entrepreneurial businesses; sustainable jobs; community enhancement

Statement of purpose: This bill would implement initiatives to strengthen the core economic, environmental, and community assets of Vermont. It proposes to:

(1) Provide for comprehensive economic mapping of the state, including mapping and measuring economic, environmental, and community assets, by the agency of commerce and community development.

(2) Establish a center for entrepreneurship, governed by an entrepreneurship council, that will offer entrepreneurship training and provide links among incubators, start-up capital, and financial and professional networks.

(3) Establish a higher education challenge grant fund to provide challenge grants to institutions of higher education to create centers of learning in key areas of Vermont in order to stimulate economic growth opportunities.

(4) Provide a credit against income tax for certain eligible start-up capital contributions in a private start-up capital fund that will invest in certain entrepreneurial and knowledge-based businesses.

(5) Establish a downtown tax property assessment fund to assist municipalities to determine and evaluate the assessment of property proposed for redevelopment in a downtown development district.

(6) Direct the department of labor and industry to continue to review fire prevention, life safety, and accessibility codes as they apply to downtown and village center preservation, especially in upper floor development.

(7) Implement broadband demonstration projects to expand broadband service throughout the state.

(8) Direct the agency of commerce and community development to collaborate with the World Trade Office to provide support for the expansion of Vermont businesses into foreign markets.

(9) Establish a Vermont film production assistance program to promote film production in the state.

AN ACT TO STIMULATE THE GROWTH OF A SUSTAINABLE CREATIVE ECONOMY AND CREDIBLE JOBS IN VERMONT

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. PURPOSE

The purpose of this bill is to implement governmental initiatives that will strengthen the core assets of Vermont, including Vermont's unique sense of place, revitalized downtowns and village centers, and working landscapes that attract, recruit, and retain innovators and entrepreneurs who develop businesses and jobs that increase the vitality of our regional economy. These initiatives include mapping and measuring economic, environmental, and community assets that form the broad Vermont economic environment; investing in higher education and broadband communication; continuing the momentum to revitalize our downtowns and village centers; creating an educational approach and economic atmosphere that stimulates innovation and entrepreneurship; providing access to broader markets and new capital; and encouraging the creation and growth of knowledge-based, value-added businesses.

* * * Documentation of Economic Resources * * *

Sec. 2. ECONOMIC MAPPING PROJECT; AGENCY OF COMMERCE AND COMMUNITY DEVELOPMENT; APPROPRIATION

(a) The agency of commerce and community development shall contract with the Vermont Center for Geographic Information to consolidate state data in a comprehensive multi-layered document that maps and assesses the locations of various state enterprises and assets, including value-added agriculture,

renewable energy resources, revitalized and vibrant downtowns and village centers, working landscapes, expanded availability of cutting edge telecommunications systems, centers of technology and higher learning, medical services, and other educational, cultural, natural, recreational, and historical state resources. This document shall be completed no later than January 1, 2005, and shall be updated annually to reflect changes in the business, social, cultural, environmental, educational, and technological landscape.

(b) The agency shall issue an annual report, using the mapping document, that analyzes the state's economic performance, using not only existing analytical criteria but new measures, including export figures, enterprise start-ups, and longitudinal growth of businesses. In order to identify new opportunities and areas of strengths and weaknesses, including potential barriers to success, the agency shall create benchmarks for success that reflect the new economy and emerging markets.

(c) This document shall be made widely available for public and private entities to use as a tool for economic development, for promotion of tourism and Vermont's unique economic and ecological environment, and for recruitment of entrepreneurs who develop knowledge-based businesses.

(d) There is appropriated from the general fund in FY 2005 the amount of $50,000.00 to the agency of commerce and community development to carry out the purposes of this section.

* * * Promotion of Entrepreneurship * * *

Sec. 3. CENTER FOR ENTREPRENEURSHIP; COUNCIL ESTABLISHED; APPROPRIATION

(a) There is created a center for entrepreneurship to be governed by the entrepreneurship council composed of ten members to include the secretary of commerce and community development or designee, the commissioner of employment and training, two members from the Vermont chamber of commerce, two members from the rural development council, two members from the Vermont economic progress council, and the treasurer and the executive director of the Vermont economic development authority.

(b) The center for entrepreneurship shall:

(1) Generally support entrepreneurship efforts and coordinate public investment by creating an incubator network, linking private capital to emerging businesses, providing entrepreneurship training and mentoring, and promoting public incentives for investment in entrepreneurial businesses.

(2) Pursue partnerships and form coalitions with higher educational institutions or other appropriate educational or cultural entities for colocation and to develop collaborative beneficial opportunities for encouraging and perpetuating entrepreneurship.

(c) The entrepreneurship council shall:

(1) Seek private and public partnerships for the sustainability of projects.

(2) Contract for the creation of two entrepreneurial training curricula, one for two demonstration programs for students at the secondary school level as described in subdivision (3) of this subsection and one for an ongoing entrepreneurial training program for adults to be provided through the incubator network as described in subdivision (4) of this subsection. The Small Business Administration and public and private institutions of higher learning shall be consulted in designing these curricula in order to minimize redundancy. The curricula may include the following components:

(A) Clarification of the legalities regarding ownership of intellectual property.

(B) Traditional and creative sources of financing for business start-up or expansion.

(C) Employee benefits and mandates.

(D) Tax realities, credits, and advantages.

(E) Description of the advantages of various Vermont communities for creation of knowledge-based business enterprises.

(3) Award demonstration grants for entrepreneurial training projects for secondary school students through a competitive grant process to two secondary schools.

(4) Work with the department of employment and training to revamp its reemployment training programs to include the entrepreneurship training curriculum for adults as described in subdivision (2) of this subsection.

(5) Support at least three incubator sites geographically distributed throughout the state that are located near population centers and will provide access to entities that will provide space and share technology and research among institutions of higher education, businesses, and individuals, and provide mentoring services and training for business creation and expansion. These incubators shall also implement entrepreneurial training programs based on the curriculum created by the entrepreneurial council in subdivision (2) of this subsection. This entrepreneurial training program shall be offered to adults to provide entrepreneurial business start-up and expansion training.

(6) Support technical transfer and coordinate marketing efforts with the department of tourism regarding wood production, cheese production, and other agricultural artisan entrepreneurial enterprises.

(d) There is appropriated in FY 2005 to the council for entrepreneurship the amount of $550,000.00 as follows:

(1) The amount of $250,000.00 from the general fund to be expended as follows:

(A) The amount of $50,000.00 for the administration of the center for entrepreneurship.

(B) The amount of $200,000.00 to carry out the purposes of subdivision (c)(2) of this section to develop and implement the entrepreneurship training curricula in the incubator sites.

(2) The amount of $50,000.00 from the education fund to carry out the purposes of subdivision (c)(2) of this section to create two entrepreneurial training demonstration projects in secondary schools.

(3) The amount of $250,000.00 from the issuance of general obligation bonds to develop the three incubator sites as described in subdivision (c)(5) of this section.

Sec. 4. HIGHER EDUCATION CHALLENGE GRANT FUND; REVIEW PANEL; CREATION; APPROPRIATION

(a) There is created a higher education challenge grant fund to be administered by the higher education challenge grant review panel composed of six members to include a member appointed by the governor, the executive director of the Rural Development Corporation, a member from the New England Board of Higher Education who is not from Vermont, a representative from the Vermont Economic Development Authority, a representative from the Independent Schools Association, and a representative from the Commission on Higher Education Funding. The fund shall be composed of state and federal funds that may be appropriated by the general assembly; gifts, grants, or other contributions to the funds; and proceeds from the issuance of general obligation bonds.

(b) Three higher education challenge grants in the amount of $100,000.00 from the fund shall be awarded to three institutions of higher education to be used as a catalyst to create centers of learning that stimulate economic growth opportunities in Vermont and contribute to an economic and cultural environment that attracts, retains, and supports entrepreneurship of all kinds. An eligible institution may include any public or independent institution of higher education provided the center of learning is established in Vermont. A center of learning may focus on any of the following fields:

(1) Downtown redevelopment.

(2) Value-added agriculture.

(3) Renewable energy production.

(4) Arts and publishing.

(5) Entrepreneurship, training, venture capital funding, and economic development.

(6) Cultural tourism.

(c) Each center of learning shall be designed to do the following:

(1) Leverage other funds in order to create long-term sustainability.

(2) Provide support to Vermont entrepreneurs working in the specific areas of interest of the learning center.

(3) Provide to the general assembly policy recommendations for strengthening Vermont's economic environment to support growth in the areas of interest of the learning center.

(d) The higher education challenge grant review panel shall review and score applications and award a higher education challenge grant to three institutions of higher education based on the following criteria:

(1) Strength of business plan, including implementation details, impact potential, and sustainability.

(2) Ability to leverage private resources.

(3) Extent of investment in the facility or the center.

(4) Strategy for transferring technology and intellectual property developed in the center of learning.

(5) Strategy for research and for providing policy recommendations.

(6) Partnerships with existing regional resources to strengthen the return on investment and ensure effectiveness.

(7) Geographic distribution of the proposed centers.

(e) There is appropriated in FY 2005 the amount of $300,000.00 from the general fund to the higher education challenge grant fund to carry out the purposes of this section.

Sec. 5. 10 V.S.A. chapter 14A is added to read:

CHAPTER 14A. THE VERMONT SEED CAPITAL FUND

§ 291. VERMONT SEED CAPITAL FUND; AUTHORIZATION; LIMITATIONS

(a) The formation of a private investment fund to be named "the Vermont seed capital fund" or "the fund" is authorized for the purpose of increasing the amount of investment capital provided to new Vermont firms or to existing Vermont firms for the purpose of expansion.

(b) The Vermont seed capital fund shall be formed as either a business corporation or a limited partnership pursuant to Title 11 and shall be subject to all the following:

(1) The Vermont seed capital fund shall not invest in any firm in which a total of more than a 25 percent interest in that firm is held by an investor of the Vermont seed capital fund combined with any interest held in the firm by the spouse or dependent children of the investor.

(2) Before the fund makes any investments, the fund shall:

(A) If organized as a corporation, have and thereafter maintain a board of nine directors, seven of whom shall be elected by the shareholders and two of whom shall be appointed by the governor with the advice and consent of the senate and shall represent the public interest of the state.

(B) If organized as a partnership, have and maintain a board of three advisors appointed by the governor with the advice and consent of the senate. The board of advisors shall represent solely the public interest of the state with respect to the management of the fund and shall have no civil liability for the financial performance of the fund. The board of advisors shall be advised of investments made by the fund and shall have access to all information held by the fund with respect to investments made by the fund.

(3) The Vermont seed capital fund, within 120 days after the close of each fiscal year of its operations, shall issue a report that includes an audited financial statement certified by an independent certified public accountant. This report shall be distributed to the governor and the legislative council and made available to the public. The report shall include a discussion of the fund's impact on the Vermont economy and employment.

(4) The Vermont seed capital fund shall not make distributions of more than 75 percent of its net profit to its investors during its first five years of operation.

(5) No person shall be allocated more than 10 percent of the available tax credits. For the purposes of determining allocation, the attribution rules of Section 318 of the Internal Revenue Code in effect as of the effective date of this chapter shall apply.

(6) The first $2 million of capitalization of the Vermont seed capital fund raised from Vermont taxpayers on or before January 1, 2014 shall be eligible for partial tax credits as specified in 32 V.S.A. § 5830b.

(7) All investments and related business dealings using funds that qualify for partial tax credits under 32 V.S.A. § 5830b shall be subject to the following restrictions:

(A) The investments shall be restricted to Vermont firms, which for the purposes of this chapter means that their Vermont apportionment under 32 V.S.A. § 5833 equals or exceeds 50 percent. Any funds invested in Vermont firms shall be used for the purpose of enhancing their Vermont investments.

Investment shall be restricted to firms that export the majority of their products and services outside the state or add substantial value to products and materials within the state. In its investments, the fund shall give priority to new firms and existing firms that are developing new products.

(B) Each Vermont seed capital fund investment in any one firm, in any 12-month period, shall be limited to a maximum of ten percent of the Vermont seed capital fund's capitalization.

(C) At least two-thirds of the monies invested by the Vermont seed capital fund and qualifying for a tax credit under 32 V.S.A. § 5830b shall at all times be invested in the form of equity or convertible securities. This provision shall not prohibit the generally accepted business practice of earning interest on working funds deposited in relatively secure accounts such as savings and money market funds.

§ 292. INITIAL ORGANIZATION

(a) In order to provide for the initial organization of the fund, the governor shall appoint a committee to act as founders, consisting of five individuals having business background and experience. The committee shall incorporate the Vermont seed capital fund organizing corporation by filing with the secretary of state the articles of incorporation.

(b) If the directors of the Vermont seed capital fund organizing corporation organize the fund as a corporation, the organizing corporation shall file with the secretary of state the articles of incorporation of the Vermont seed capital fund, a corporation.

(c) In the event the directors of the Vermont seed capital fund organizing corporation organize the fund as a limited partnership, the organizing corporation shall file with the secretary of state the certificate and partnership articles of the Vermont seed capital fund, a limited partnership.

(d) These documents shall reflect the purposes of this chapter and conform to the limitations in section 291 of this title, and shall not be adopted or amended without conformity with this chapter and Title 11.

(e) If the fund is organized as a limited partnership, the Vermont seed capital fund organizing corporation shall initially be a general partner. The directors of the Vermont seed capital fund organizing corporation shall thereafter select a general partner or partners to manage the fund; the articles of partnership shall be amended and the Vermont seed capital fund organizing corporation shall be dissolved and its existence terminated.

§ 293. CAPITALIZATION

The fund may solicit and receive subscriptions provided that subscriptions for amounts exceeding $2 million shall be reduced pro rata among subscribers subscribing for more than $2 million in the event the issue is oversubscribed by the termination date as set by the fund. The minimum capitalization shall be $1 million.

Sec. 6. REPEAL

Chapter 14 of Title 10 (Vermont Venture Capital Fund) is repealed, effective July 1, 2010.

Sec. 7. 32 V.S.A. § 5830b is amended to read:

§ 5830b. TAX CREDITS; VERMONT ~~VENTURE~~ SEED CAPITAL FUND

(a) The ~~initial $3 million of capitalization of the~~ Vermont ~~venture~~ seed capital fund, comprising a maximum $2 million raised from Vermont taxpayers on or before January 1, ~~1993~~ 2014, shall entitle those taxpayers to a credit against the tax imposed by sections 5822, 5832, 5836, or 8551 of this title. The credit may be claimed for the taxable year in which a contribution is made and each of the ~~eight~~ four succeeding taxable years. The amount of the credit for each year shall be the lesser of ~~ten~~ 20 percent of the taxpayer's contribution or 50 percent of the taxpayer's tax liability for that taxable year prior to the allowance of this credit; provided, however, that in no event shall the aggregate credit allowable under this section for all taxable years exceed 50 percent of the taxpayer's contribution to the ~~initial $3~~ total $2

million capitalization of the Vermont ~~venture~~ seed capital fund. The credit shall be nontransferable except as provided in subsection (b) of this section.

(b) If the taxpayer disposes of an interest in the Vermont ~~venture~~ seed capital fund within six years after the date on which the taxpayer acquired that interest, any unused credit attributable to the disposed-of interest is disallowed. This disallowance does not apply in the event of an involuntary transfer of the interest, including a transfer at death to any heir, devisee, legatee, or trustee, or in the event of a transfer without consideration to or in trust for the benefit of the taxpayer or one or more persons related to the taxpayer as spouse, descendant, parent, grandparent, or child.

Sec. 8. EFFECTIVE DATE

Sec. 5 of this act (Vermont seed capital fund tax credit) shall apply to contributions made in taxable years 2004 and after.

* * * Revitalization of Downtowns and Village Centers * * *

Sec. 9. 24 V.S.A. § 2797 is added to read:

§ 2797. DOWNTOWN PROPERTY ASSESSMENT FUND

(a) There is created a downtown property assessment fund created pursuant to subchapter 5 of chapter 7 of Title 32 to be administered by the department of housing and community affairs for the purpose of providing financing to municipalities in order to determine and evaluate a full assessment of the extent and the cost of remediation of property located in a designated downtown development district sufficient to acquire approval of a correction plan, or in the case of an existing building, an assessment that supports a clear plan, including the associated costs of renovation to bring the building into compliance with state and local building codes.

(b) The fund shall be composed of the following:

(1) State or federal funds that may be appropriated by the general assembly.

(2) Any gifts, grants, or other contributions to the funds.

(3) Proceeds from the issuance of general obligation bonds.

(c) A municipality may apply to the fund for the assessment of property and existing buildings proposed for redevelopment that are located in a designated downtown development district, provided the department finds that the property or building:

(1) Is not likely to be renovated or improved without the preliminary assessment.

(2) When renovated or redeveloped, will integrate and be compatible with regional development, capital, and municipal plans and create new property tax value of at least $50,000.00 a year and do one or more of the following:

(A) Revitalize and improve significant downtown areas.

(B) Enhance employment opportunities within downtowns and surrounding regions.

(C) Provide incentives for business growth.

(D) Retain or expand employment with long-term permanent jobs.

(E) Support the development of high density housing in the commercial center of a municipality.

(F) Reduce pressure for development on open lands in the region.

(G) Reduce traffic congestion and protection of existing interstate exchanges.

(H) Create public benefits, such as open spaces, community and cultural facilities, job training, and support of local contractors and suppliers.

Sec. 10. APPROPRIATION

There is appropriated from the general fund in FY 2005 the amount of $1 million to the downtown property assessment fund to carry out the purposes of Sec. 9 of this act.

Sec. 11. 24 V.S.A. § 2798 is added to read:

§ 2798. DOWNTOWN REVITALIZATION FUND

(a) There is created a downtown revitalization fund pursuant to subchapter 5 of chapter 7 of Title 32 to be administered by the department of housing and community affairs for the purpose of helping municipalities by providing capital for the redevelopment of buildings that are located in designated downtown centers or village centers and that will house economic catalysts that enhance the economy and culture of the downtown or village center.

(b) The fund shall be composed of the following:

(1) State or federal funds that may be appropriated by the general assembly.

(2) Any gifts, grants, or other contributions to the funds.

(3) Proceeds from the issuance of general obligation bonds.

(c) Any person may apply for grants for financial assistance from the fund for capital to finance the redevelopment of a building that is located in a designated downtown development district, provided the building will house one or more economic catalysts, which for the purposes of this section means any nonprofit entity, including an educational institution, cultural facility, or community gathering center such as an outdoor market, park, play area, or other similar public center, that is determined to enhance the vitality of the economy and culture of the downtown district. Grants will be awarded based on the extent to which the redevelopment project investment will:

(1) Generate a critical mass of activity in the downtown area that in turn will generate and support ancillary private enterprise.

(2) Contribute to the critical mass of skills necessary to support knowledge-based business collaboration and entrepreneurship.

(3) Contribute to the unique sense of place in the downtown and create a magnet for other entrepreneurs.

Sec. 12. APPROPRIATION

There is appropriated to the downtown revitalization fund the amount of $250,000.00 from the issuance of general obligation bonds.

Sec. 13. 32 V.S.A. § 10002(o) is added to read:

(o) Also excluded from the definition of "land" is any parcel of land certified by the Vermont downtown development board established in 24 V.S.A. § 2792 as being located in a designated downtown or village center.

Sec. 14. LABOR AND INDUSTRY; BUILDING CODES; DOWNTOWN AND VILLAGE CENTER PRESERVATION

The department of labor and industry shall continue to help property owners to understand and apply the technical requirements of the fire prevention and life safety code and the accessibility code, including alternative solutions that may be available for existing buildings with the goal of maintaining safety, increasing universal access, reducing application of resources, and increasing predictability. The department shall issue a report on or before January 1, 2005, indicating the progress being made in its continued implementation of the following policies:

(1) Developing a clear policy on phasing fire and life safety code requirements that allow longer time frames for compliance where appropriate.

(2) Developing standards for low risk occupancies with limited code obligations.

(3) Promoting use of equivalencies and alternatives that provide equivalent safety protection.

(4) Producing an informational brochure on the applicability of codes.

(5) Presenting workshops for code officials, developers, property owners, architects, and downtown managers.

(6) Analyzing variance data, statutes, and rules on accessibility and fire prevention and life safety, including surveying past access board applicants to determine appropriate exemptions.

(7) Establishing a preliminary review checklist that identifies high priority code issues and provides mechanisms to determine if the preliminary review process has satisfactorily addressed them.

(8) Creating consistency between the department plan and field reviews to expedite the process for issuing permits.

(9) Encouraging coordination of sidewalk infrastructure projects with opportunities for access improvements and with water upgrades to facilitate easier sprinkler system installations.

(10) Assuring that a change in use of an existing building that did not undergo extensive renovations does not trigger its consideration as a new building under the life safety code.

* * * Expansion of Markets and Communication * * *

Sec. 15. BROADBAND DEVELOPMENT; DEMONSTRATION PROJECTS; APPROPRIATION

(a) The Vermont Broadband Council shall prepare a request for proposals, select communities for providers to implement five broadband demonstration projects, and provide technical assistance to municipalities to help determine the grant. Any municipality or community selected at least shall:

(1) Include a designated downtown or village center within the proposed service area.

(2) Offer private sector partnership possibilities particularly with an institution of higher education or other public service entity such as a hospital, a housing authority, or a state or federal office.

(3) Have no or limited access to broadband services.

(b) Each project contract shall do at least the following:

(1) Provide broadband service to the last mile of the service area and offer access to service to every member of that service area.

(2) Provide a minimum of five years of service.

(3) Offer a fixed price for all consumer and business access.

(c) The selection shall be awarded by the municipality with technical assistance by the Vermont Broadband Council based on the following competitive issues:

(1) Price per connection.

(2) Ownership of the infrastructure by the municipality at the termination of the contract.

(3) Number of people served.

(4) Speed of delivery.

(5) Cost of distribution to new construction.

(d) There is appropriated in FY 2005 the amount of $250,000.00 from the general fund to the agency of commerce and community affairs to award five grants of $50,000.00 each to five broadband projects as required in this section.

Sec. 16. WORLD TRADE ORGANIZATION; COMMERCE AND COMMUNITY DEVELOPMENT; EXPANSION OF INTERNATIONAL MARKETS; APPROPRIATION

(a) The agency of commerce and community development shall collaborate with the World Trade Office to expand trade shows and missions and to establish a program to provide networking, training, and specific export support for Vermont businesses that are willing and deemed appropriate for expansion into foreign markets. This program shall be developed to become self-funded through a fee for services or a percentage.

(b) There is appropriated to the agency of commerce and community development from the general fund in FY 2005 the amount of $225,000.00 as follows:

(1) The amount of $125,000.00 to the World Trade Office to expand missions and trade shows to enhance foreign export opportunities for Vermont businesses.

(2) The amount of $100,000.00 for the development of an incentive grant program that provides support and training to certain Vermont businesses to encourage their expansion to foreign markets. The program shall be designed to become self-sustaining by charging businesses a fee for service or contracting for a percentage of any increased profits reaped by successful program participants.

* * * Cultural Enhancement * * *

Sec. 17. FILM PRODUCTION ASSISTANCE PROGRAM

(a) For the purposes of this section:

(1) "Eligible film project" means a film project that:

(A) Is undertaken by a film production company that:

(i) Has obtained a minimum of one-half of the estimated total production costs from other sources.

(ii) Has posed financial security deemed to be necessary by the Vermont Film Corporation.

(B) Does not contain content or material that would rate the film as "NC17" or "Mature Audience Only."

(2) "Authority" means the Vermont Economic Development Authority.

(b) There is created a Vermont Film Production Assistance Program that provides loan guarantees to eligible film projects through the authority. This assistance will guarantee a portion of loans made by other lenders to encourage additional private financing of eligible film projects. The loan guarantee shall not exceed 30 percent of the bank financing cost of the film project or $1,500,000.00, whichever is less. The authority shall review applications and award loan guarantees to eligible film projects, provided the film project complies with the following criteria:

(1) At least 70 percent of the shooting days of the film project shall take place in Vermont.

(2) Vermont residents comprise at least 30 percent of the film production crew.

(3) The project has acquired performance bonds.

(c) The film assistance program shall acquire and retain a security interest in the assets of the film production company, including all revenues, payments, money, and proceeds generated by the company's film project to the extent necessary to ensure full recovery of the amount of financial assistance awarded. The film production company shall enter into a faithful performance bond or similar security with the film assistance program.

Appendix I: Federal Brownfield Tax Credit Bill

Rep. Michael Turner
Brownfield Tax Credit Bill Proposal
Background

Brownfields are defined as abandoned or underutilized properties where expansion or redevelopment is complicated by environmental contamination. Examples include abandoned industrial and commercial properties, old gas stations and vacant warehouses. These properties are found in every state and every congressional district, and are particularly prevalent in or nation's cities. Estimates range from 500,000 to 1 million brownfields sites, covering roughly 400,000 acres. These sites are missed economic development opportunities.

Brownfields are a federally created problem. The comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA or Superfund Act) made every past and present property owner full responsible for all costs to remediate environmental problems once those problems are identified. The net result is that properties with suspected contamination are abandoned to avoid potential liability for high cleanup costs. Properties remain abandoned, and contamination lingers.
The Small Business Liability Relief and Brownfields Revitalization Act of 2002 provides some protection against liability but does not address the high redevelopment costs of brownfields sites. The act does not provide sufficient incentive for voluntary action, and so potentially valuable brownfield sites remain abandoned rather than contributing to economic revitalization and providing jobs.

Bill Summary
The proposed Brownfields Tax Credit Program would provide funding for demolition and environmental remediation costs through the familiar tax credit structure. Brownfield tax credits would generate capital toward project costs, stimulate private investment, and ensure that federal funds are used for targeted economic development goals.

Specifically the proposed Brownfields Tax Credit Program would provide $1 billion in federal tax credits allocated to states according to population. The credit program would be administered by state development agencies, and would provide credits to brownfield redevelopment projects where the local government entity includes a census track with poverty in excess of 20%. States would give preference to redevelopment projects based on the extent of contamination remediated, the poverty at the location of the project, the number of jobs created, the position of the property within the central business district and the owner's financial commitment for redevelopment. The credits would be awarded based on a remediation plan approved by the state development agency. Other criteria would be determined by the states which administer the program.
Brownfields tax credits would be allocated for up to 50% of demolition and remediation costs pursuant to an approved remediation plan. These credits would be transferable and could be sold to third parties such as banks. The proceeds of the sale would be non- taxable. The remainder of cleanup costs would be deductible/depreciable by the property

owner, and the plan also includes incentives for original polluters to participate in redevelopment. Therefore, potentially responsible parties that contribute no less than 25% of remediation costs receive liability release for 100% of approved remediation plan demolition and remediation costs. The remaining 25% of remediation costs could be paid by either the property owner or other state or local government entities.

This Brownfields Tax Credit Program is a powerful incentive for cities, developers and parties facing brownfields liability to transform those sites into job producing economic development. It benefits not only brownfield property owners facing liability but also banks, financial institutions and businesses who could receive the tax credits; developers; manufacturers; urban residents and businesses; minority groups; cities and states and environmental organizations. It spurs private sector economic development, grows private investment, and returns valuable land to productive use by creating opportunities for housing, businesses and other uses. Jobs are created, increasing the tax base, and environmental hazards are remediated.

Brownfields in Vermont

A brownfield is defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substance, pollutant, or contaminant." (Environmental Protection Agency). The present number of brownfields in the US is unknown, with estimates from 450,000 to over one million.

Where are they found?

Brownfields are mainly found in urban and suburban areas, but also exist in rural areas as well. Popular brownfield sites are old industrial properties, old gas stations, vacant warehouses, former dry cleaning establishments, abandoned residential buildings, or at any location that once had a hazardous waste generator.

Why are they important?

The redevelopment of brownfields is known to stimulate and improve urban renewal and economic growth. They contribute to the rejuvenation of impoverished urban centers and neighborhoods, create hundreds of new jobs, generate hundreds of thousands of dollars in earned wages, and millions of dollars in tax revenue.

Moreover, brownfield redevelopment has played a critical role in the prevention of urban sprawl. Every acre of reclaimed brownfields saves 4.5 acres of greenspace, and every acre of greenspace created, on average, has doubled the value of surrounding properties (Christie Whitman, former head of EPA). Many states have incorporated brownfields into their "smart growth" plans, with a focus of reducing public costs and increasing private returns, saving natural resources, creating better access to goods and services, redeveloping within existing infrastructure, and preserving a sense of place (*National Governors Association*, 2000).

How are brownfields redeveloped?

The process of cleaning up brownfields is very complex and costly. Owners are responsible for the cleanup, which consists of not only the cleanup itself, but also numerous environmental site assessments (ESA), permit applications, and legal and scientific consulting. Once this is finished and the DEC is contacted, the actual cleanup must be conducted according to state and federal regulations. The overall process to redevelop brownfields may take years to complete.

CURRENT LEGISLATION

Vermont: Redevelopment of Contaminated Properties Program (RCPP)[66]

- Promotes development of brownfields by relieving the sponsor of liability after cleanup.
- Owner of property submits application addressing proposed redevelopment of property.
- State reviews application, then requires a Site Investigation as well as $5,000 to cover cost of state's oversight for plan review, construction and monitoring.
- Once plan is accepted, owner must fulfill all duties included in the plan.
- Once duties are completed, owner is relieved of all liability for issues related to contamination before the finish date.

Federal: Small Business Liability Relief and Brownfields Revitalization Act[67]

- Passed: January 11, 2001
- Amends Superfund to protect small businesses and encourage development of brownfields.
- Provides exemptions from Superfund liability for small volume contributors of hazardous waste, businesses under the Small Business Act and certain non-profit organizations.
- Grants used to redevelop brownfields are generally $200,000 and may also be used to provide training, research and technical assistance to help with brownfields redevelopment.
- $50 million each year from 2002-2006 for states and tribes to develop state response programs for hazardous waste and brownfields.

[66] Summary compiled with the help of the DEC's *Cleanup of Hazardous Waste Sites Under the Vermont Redevelopment of Contaminated Properties Program Fact Sheet*. Found at: http://www.anr.state.vt.us/dec/wastediv/sms/RCPP/factsheets.htm.

[67] Summary completed with the help of the EPA's summary entitled: "Summary of the Small Business Liability Relief and Brownfields Revitalization Act". Can be found at: http://www.epa.gove/brownfields/html-doc/2869sum.htm

Federal: Brownfield Site Redevelopment Assistance Act of 2002

- $60 million for 5 years (2003-2007) for brownfield redevelopment.
- Grants are given to projects focused on promoting economic development and eco-industrial development.
- Run by the Department of Commerce's Economic Development Administration (EDA).

PROPOSED LEGISLATION

Vermont Bill S.42: An act relating to creating an office of land recycling, and otherwise revising the brownfields reclamation program (PRO)

- Sponsored by: Matt Dunne, Hinda Miller
- Status (May 2004): passed Senate 5/13/03, passed House 4/27/04, currently in conference
- Revises 10 V.S.A 6615a (Redevelopment of Contaminated Properties Program).
- Exempts municipalities and government agencies from liability under 10 V.S.A 6615 when properties are obtained involuntarily
- Calls for greater research into the brownfields situation in Vermont
- Asks secretaries to come up with a list of the best candidates for redevelopment, and plans to fund those projects
- Exempts qualifying redevelopers from hazardous waste taxes under 32 V.S.A 10103(b)
- Asks the Secretary of Commerce and Community Development to investigate insurance products

Vermont Bill S.128: An act relating to establishing a brownfields remediation standard (CON)

- Sponsors: Robert Ide (no longer a senator)
- Status (May 2004): in Natural Resources and Energy Committee
- Proposes to revise RCCP to create a "brownfields remediation standard"
- Determination of eligibility is no longer at the Secretary of Natural Resources' sole discretion
- Secretary of Commerce and Community Development would be an interested party and would be eligible to intervene
- Adjacent property owners and the town and regional development corporations will upon request have party status

Vermont Bill S.296: Stimulate the growth of a sustainable creative economy and credible jobs in Vermont (PRO)

- Sponsors: Matt Dunne, Hinda Miller, John Campbell, and Kevin Mullin
- Status (May 2004): in Senate Finance Committee
- Provides funding for the assessment and redevelopment of brownfields
- Creates 3 higher education institute grants of $100,000 each which may be used for brownfields research
- Creates "downtown property assessment fund" and adds $1 million to it in fiscal year 2005
- Creates a downtown revitalization fund and adds $250,000 to it in FY 2005

Federal Brownfield Tax Credit Bill (PRO)

- Sponsor: Rep. Michael Turner
- Proposed March 2004
- Provide $1 billion in state funding for brownfields redevelopment, allocated by state population size
- The program would be administered by state agencies.
- Credits, which are transferable and able to be sold, could be good for up to 50% of the cost of remediation.
- Provides incentives for original polluters to contribute. For example, a potentially responsible party that pays for no less than 25% of the clean-up costs would receive a 100% liability release

ANALYSIS AND RECOMMENDATIONS

Market-based incentives

- Liability relief; tax credits and abatements, property-tax credits; grants and revolving loans.

Other recommendations

- Conduct an inventory of brownfields; include public participation